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LAKE ERIE SHORE ZONE MANAGEMENT PROGRAM  
LEGAL AND ADMINISTRATIVE ANALYSIS  
SUB-PROGRAM I. B.

Prepared for  
The Ohio Department of Natural Resources

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Author's Note

All references to Sections, unless otherwise specified, refer to the Ohio Revised Code.

In order to facilitate understanding and readability for the non-lawyer, the standard form of legal citation has been slightly altered.

The material contained herein represents the best professional judgment of the consultants (William T. Boukalik in cooperation with Climaco, Goldberg & Boukalik, Paul S. Lefkowitz and Urbanistics, Inc.; David Meeker, President) and does not represent the opinion of the officials of the Ohio Department of Natural Resources or the official position of the State of Ohio until such time as it may, in all or in part be adopted by it.

# I

## INTRODUCTION

It is said the American system of government was intended to resemble a layer cake, with the Federal government the top layer, the states the middle layer, and local government the bottom layer. Today, however, the analogy goes, the system tends more to resemble a marble cake with little clear functional distinction. An administrative and legal analysis of the Ohio Lake Erie Shore Zone tends to strengthen one's belief in the comparison.

While the deterioration of Lake Erie and its shore zone can be blamed on the abuses of man and the ravages of nature, our inability to deal effectively with the problems of the lake and its coastline must be at least partially credited to government at all levels, and ultimately to the people who shape its forms.

Today, we have recognized that we are in serious danger of destroying perhaps Ohio's greatest natural resource for all time. What and how government-- and the people of Ohio-- can do about it is the subject of this study.

### A. COASTAL ZONE MANAGEMENT ACT OF 1972 (PL 92-583)

In enacting the Coastal Zone Management Act of 1972, the Congress of the United States recognized that it is in the national interest to insure

the effective management of the coastal zones in that such zones are rich in natural, commercial, recreational and industrial resources and many of these resources have been and are being damaged by ill planned development. The Coastal Zone Management Act of 1972 established the policy of:

Encouraging the states to exercise their full authority over the lands and waters in the coastal zone by assisting the state in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance. [Section 302 (h)]

Under the Act each state with a coastal zone is required to develop a Coastal Zone Management Program. The requisite parts of the program must include:

- 1) An identification of the boundaries of the coastal zone.
- 2) A definition of what will constitute permissible land and water uses having a direct and significant impact on coastal waters, within the coastal zone. To this end, the State must define permissible uses as those which can be reasonably and safely supported by the resource, which are compatible with surrounding utilization, and which will have a tolerable impact upon the environment.
- 3) The State must inventory and designate areas of particular concern within the coastal zone. In determining whether an area is of particular concern, the State must look at areas of unique, fragile or vulnerable habitat; areas of high natural productivity; areas of substantial



recreational value; areas of unique ecologic or topographic significance to industrial or commercial development; areas of urban concentration; and areas of significant hazard, if developed, from storms, slides and floods.

4) The State must identify the means by which the State proposes to exert control over the land and water uses.

5) The State must enact broad guidelines on priority of uses in particular areas.

6) The State must describe and develop the organizational structure necessary to implement the program.

The program must give the State the necessary authority to control the land and water uses within the coastal zone by any one or a combination of the following techniques:

1) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.

2) Direct state land and water use planning and regulation.

3) State administrative review for consistency with the program, with power to approve or disapprove after public notice and hearing [Section 306 (e)(1)].

The program must assure that local land and water regulations within the zone do not unreasonably restrict or exclude land and water uses of regional benefit.

## B. PURPOSE OF STUDY

As defined by the Ohio Department of Natural Resources, the purpose of the Legal and Administrative Analysis performed in this study included: (1) the conduct of an analysis of the legal and administrative arrangements underlying state, regional and local planning and management programs in Ohio and (2) the development of recommendations regarding legislative and administrative changes required to implement the Ohio Lake Erie Shore Zone Management Program.

The study attempted to go beyond the mere language of laws ~~✗~~ and administrative procedures at the state, regional and local levels to examine what, in fact, occurs in the implementation of the vast body of laws and procedures impacting on the Lake Erie Shore Zone. The study sought to broaden understanding of attitudes held by governmental officials, both elected and appointed, toward a variety of administrative and legal techniques that are currently available or might be made available.

Workability was a matter of the deepest concern. The question of what laws, if any, might be required in addition to the current body of law, and what procedural mechanisms, if any, could best implement such laws, was dealt with in the context of "What will work with the least additional bureaucracy and cost and with the greatest possible acceptance from the general public and the governmental entities which serve them?"

In examining a wide range of alternative legislative and administrative approaches to the management of the Lake Erie Shore Zone, the study recognized that the current problems of the shore zone are the result of decades of activity and thus will require many years of concentrated effort to effect improvement. There are no instant solutions to the problems. Regardless of administrative or legal changes, patience and perserverance will be especially important in treating Lake Erie's Shore Zone in Ohio.

### C. SCOPE OF STUDY

The nine-county Ohio Lake Erie Shore Zone Planning Region (Lucas, Wood, Ottawa, Sandusky, Erie, Lorain, Cuyahoga, Lake, and Ashtabula) includes three State Service Districts and three State Planning Regions. There are 37 regional, county and municipal planning agencies in the Shore Zone Planning Region.

In the nine counties there are no less than 159 cities and villages and 210 townships of all sizes. Also, the planning region includes a myriad of districts serving diverse purposes from schools to fire protection to parks and many others.

The relationship of these governments with at least 14 departments of state government, and a number of Federal agencies (eg. Housing and Urban Development, Coast Guard, Corps of Engineers, Department of the Interior, and Others) and interstate and international

agencies (Great Lakes Basin Commission, International Joint Commission, and others) impact on the activities in the shore zone.

Because a specific review of all state, regional and local legislation and administrative procedures relative to planning and managing the Ohio Shore Zone was not feasible within the limitation of the study, the study concentrated on state legislation and procedures \* and considered a broad representative sample of regional and local legislation and procedures.

The scope of the study included a review, description and compilation of state laws and executive orders that impact on the shore zone including, but not limited to the following subject areas:

- 1) land and water use planning
- 2) land and water management
- 3) land and water use regulation
- 4) land and water acquisition
- 5) water rights
- 6) fish and wildlife management
- 7) air pollution
- 8) solid waste management
- 9) water pollution
- 10) navigation
- 11) commercial fishing

The review and analysis of existing laws and procedures was intended to identify inadequacies or the non-existence of laws and

executive orders to meet the requirements of the Coastal Zone Management Act of 1972 and the goals and objectives of the Ohio Lake Erie Shore Zone Management Program. This review and analysis included, \* insofar as possible, an identification of governmental entities with Home Rule powers, situations where jurisdictions overlap resulting in duplication of efforts, problems in interagency and intergovernmental relations, and inadequate provision for implementation of planning and management functions.

Finally the study considered alternative implementation authorities needed to meet the objectives of the program, the possibility of altering existing administrative procedures, and various new procedures which might be utilized in implementing new legislation, if enacted.

#### D. STUDY METHODOLOGY

This Legal and Administrative Analysis was conducted during the period of November, 1974, to June, 1975.

The study techniques involved included in-depth research of the Ohio Constitution, Ohio statutes, case law, relevant Federal statutes and Federal case law, the gubernatorial executive order pertaining to the Lake Erie Shore Zone, and state and local administrative procedures impacting on the shore zone.

The study further included a survey of 310 local and regional agencies. The survey was intended to elicit information regarding current activities of the agencies which relate to the shore zone; to

determine the network of intergovernmental relationships involved in shore zone activities; and to assess the attitudes of agency officials toward various possible shore zone management mechanisms.

An analysis was also made of an earlier survey conducted by the Ohio Department of Natural Resources of 9,940 residents, public officials, and public interest groups in the Shore Zone Planning Region. The findings of that survey are listed in the Appendix.

The study included in-depth personal interviews with state, regional and local officials. Approximately 40 such interviews were conducted. Interviews were also held with another 30 officials. The interviews ranged from the City of Toledo to Ashtabula Township in Ashtabula County.

The interviews were intended to seek the opinion of officials involved in day-to-day decision making in matters affecting the Lake Erie Shore Zone.

The study also reviewed coastal zone planning activities in the 30 other states involved in coastal planning under the Coastal Zone Management Act. This included a detailed examination of planning in Oregon, Washington, Florida, Illinois, Michigan, Pennsylvania, and California.

The review of the Ohio Revised Code conducted in this study resulted in cataloguing of powers of state and local government impacting on the shore zone by corresponding statute number, by agency. A matrix of key control resources and key coastal activities, by

agency, was prepared and is included as Appendix F.

Finally, alternative procedures and structures were considered \*  
for all facets of the Shore Zone Management Program and recommendations arrived at by a continuous screening process based on these considerations: legality, political feasibility, administrative efficiency, potential costs, and compliance with the purposes of the Coastal Zone Management Act.

We acknowledge with appreciation the cooperation of the Ohio Department of Natural Resources and the many other state, regional, and local agencies and officials who cooperated in this study.

## II

### POWERS AND DUTIES OF LOCAL AND REGIONAL ENTITIES AFFECTING THE SHORE ZONE

#### A. INTRODUCTION

In Ohio, local government is administered by three main governmental entities: The County, the Township, and the Municipal Corporation. Historically, all three units were at the mercy of the General Assembly, which not only had the authority to create the local governmental subdivision, but also could control the exercise of its authority or even terminate its existence, (State of Ohio v. City of Cincinnati, 52 Ohio St. 419, 40 NE 508).

By constitutional amendment, adopted by the people of Ohio in 1912, the powers of a municipal corporation were enumerated in the constitution itself and no longer rested upon the empowering acts of the Legislature. As a result, the municipal corporation is the single most important local governmental body and the entity with the greatest actual and potential impact on the shore zone.

#### B. MUNICIPAL CORPORATIONS

As mentioned above, the municipal corporation derives



its pervasive and far-reaching power from Article 18, Section

3. Section 3, entitled "Powers" provides:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits, such local police sanitary and other similar regulations as are not in conflict with general laws.

Section 2 entitled "General and Additional Laws" states:

General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

Home Rule powers are granted to municipalities which enact a charter under Section 7, entitled "Home Rule":

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of Section 3 of this Article, exercise thereunder all powers of local self-government.

Sections 2 and 7 are procedural in nature and basically provide a form for the exercise and implementation of powers granted to a municipality. The Supreme Court of Ohio recognized in the case of State ex rel City of Toledo v. Lynch, 88 Ohio St. 71, 102 NE 670, that,

These provisions of the 18th Article of the Constitution, as amended in September, 1912, continue in force the general laws for the government of cities and villages until the 15th day of the

November following and thereafter until changed in one of the three modes following: 1) By the enactment of general law for their amendment; 2) By additional laws to be ratified by the electors of the municipality to be affected thereby; 3) By the adoption of a charter by the electors of a municipality in the mode pointed out in the Article.

The Court continued;

Article 18 provides two modes of securing the permitted immunity from the operation of the uniform laws which the legislature is required to pass. One of them is defined in the second and manifestly, it is not self-executing, for it expressly authorized the legislature to pass additional laws, that is, laws additional to the general laws which the legislature is required to pass, such additional laws to become operative in a municipality only after their submission to the electors thereof and affirmance by a majority of those voting thereon. The other mode is defined in the provisions of the later sections relating to the adoption of charters. From the terms and nature of these later provisions they are self-executing in the sense that no state legislative act is necessary to make them effective.

These three separate plans of government, two of which require affirmative state action, will hereafter be consolidated into two categories: Charter Municipalities and Non-Charter Municipalities. Whichever form is chosen creates different and critical implications for the exercise of the powers of local self-government. In order to fully understand these implications Article 18, Section 3, must be broken down into its component parts:

(1) Power of local self-government, (2) Power to adopt local

police and sanitary regulations not in conflict with general law.

1. Power of Local Self-Government

Article 18, Section 3, provides generally that "municipalities shall have authority to exercise all powers of local self-government." In Fitzgerald v. City of Cleveland, 88 Ohio St. 333, 103 NE 512 (1913), the Ohio Supreme Court had its first opportunity, one year after the enactment of Article 18, to define, "powers of local self-government." In scrutinizing the municipal technique for the appointment and election of governmental officers, the Court stated:

As to the scope and limitations of the phrase "all powers of local self-government", it is sufficient to say here that the powers referred to are clearly such as involved the exercise of the functions of government, and they are local in the sense that they relate to the municipal affairs of a particular municipality.

This definition was characteristic of later judicial attempts to define the pertinent phrase, but failed to provide any specific standards to facilitate its application either by the courts or by a municipal government. The Supreme Court has subsequently had numerous, additional opportunities to expand upon and further define the provision and has found that the powers of local self-government include among others, the power to determine qualifications of councilmen, State ex rel Bindas v. Andrish, 165 Ohio St. 411, 136 NE 2nd 43 (1956); the power to lease or convey

unneded municipal property, State ex rel Leach v. Redick, 168 Ohio St. 543, 157 NE 2nd 106 (1959); the power of eminent domain, State ex rel Bruestle v. Rich, 159 Ohio St. 58, 110 NE 2nd 778 (1953); and the power to appoint police officers, State ex rel Canada v. Phillips, 168 Ohio St. 191, 151 NE 2nd 722 (1958).

In 1958, the Ohio Supreme Court for the first time handed down a comprehensive yet workable definition of "powers of local self-government".

To determine whether legislation is such as falls within the area of local self-government, the result of such legislation or the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extra-territorial affects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality. However, if the result is not so confined it becomes a matter for the general assembly, (Village of Beachwood v. Board of Elections of Cuyahoga County, 167 Ohio St. 369, 148 NE 2nd 921).

## 2. Power to Adopt Local Police and Sanitary Regulations

In Hagerman v. City of Dayton, 147 Ohio St. 313, 71 NE 2nd 246 (1947), the Ohio Supreme Court determined that the regulations referred to in Article 18, Section 3, as local police and sanitary, constituted:

An enactment of any ordinance which is aimed at the preservation of the health, safety, welfare or comfort of citizens of a municipality.

In the later case of State ex rel Canada v. Phillips, supra, dealing with the appointment of a police officer, the Court determined that matters pertaining to the organization of the police force were not automatically designated police regulations.

The mere fact that the exercise of a power of local self-government may happen to relate to the police department does not make it a police regulation within the meaning of the words police regulation found in that constitutional regulation.

### 3. General Law

General law was defined by the Supreme Court in Fitzgerald v. Cleveland, 88 Ohio St. 338, 103 NE 512 (1913) as those laws which:

relate to police, sanitary and other similar regulations, and which apply uniformly throughout the state . . . for the peace, health and safety of all of its people, wholly separate and distinct from, and without reference to, any of its political subdivisions-- such as regulate the morals of the people, the purity of their food, the protection of the streams, the safety of building and similar matters.

Since, then, the Supreme Court has consistently maintained that a general law is a law enacted by the General Assembly, (State ex rel Arey v. Sherrill, 142 Ohio St. 547, 53 NE 2nd 501) which has uniform operation throughout the state, although it need not affect all persons in the same manner, (State v. Martin, 105 Ohio App. 469, 152 NE 2nd 898 (1957); Neuweiler v. Kauer, 62 OLA 536, 107 NE 2nd 779). The Court, in a more recent decision, elaborated upon its definition of a general law and determined that:

General laws mean statutes setting for police, sanitary or similar regulations and not statutes

which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations, (Village of West Jefferson v. Robinson 1 Ohio St. 2d 113).

#### 4. What Constitutes Conflict With General Law

While technically the word "conflict" is not a term of art, it is used as such in the present context. The Supreme Court has specifically held on numerous occasions that the validity of a municipal ordinance does not depend on the question of state prohibition or pre-emption of the municipal constitutional power, [City of Fremont v. Keating, 96 Ohio St. 486 (1917), Froelich v. City of Cleveland, 99 Ohio St. 376 (1919)]. Instead "conflict" exists if the ordinance permits or licenses that which the statute forbids and prohibits and vice versa. This definition has been considered and approved repeatedly, (Village of Struthers v. Sokol 108 Ohio St. 263, 140 NE 519 (A23); City of Cleveland v. Betts, 168 Ohio St. 386, 154 NE 2nd 917 and City of Canton v. Imperial Bowling Lanes, Inc., 7 Ohio Misc. 292, 220 NE 2nd 151).

In State ex rel Canada v. Phillips, supra, it was contended that the words "as are not in conflict with general law" modified not only the words "Local police, sanitary and other similar regulations, " but also the words, "Powers of local self-government." The Court, in dealing with this contention, held that Article 18, Section 3, first gives municipalities authority to exercise all powers of local self-government, and then, with respect to some of those powers, i. e. the power to adopt

and enforce local police, sanitary and other regulations, limits these powers by providing that such regulations may "not be in conflict with general laws."

The Common Pleas Court of Stark County was faced with the identical question in Leavers v. City of Canton, 91 OLA 545 (1963). The Court felt that its decision was mandated by the earlier Supreme Court decisions of State ex rel Lynch v. City of Cleveland, supra, and State ex rel Canada v. Phillips, supra.

The Court, in a well reasoned opinion which liberally quoted the earlier cases, concluded:

The controversy concerns whether the last phrase, as are not in conflict with general laws modified all that has gone before it in Section 3, or only the portion dealing with the adoption and enforcement within the municipality's limits, of "local police, sanitary and other similar regulations." While the insertion of a comma (after the words local self-government in Section 3) would have been proof positive of an intent to have the modifier apply to the second phrase only, the converse does not necessarily follow, and this Court has chosen to read this section as it would have had a comma been inserted after the word, self-government.

Thus, the words, "as are not in conflict with general laws", found in Section 3 of Article 18 of the Constitution, modify the words "local police, sanitary and other similar regulations" but do not modify the words "powers of local self-government."

The Courts of Ohio have now conclusively determined that the phrase "not in conflict with general law," contained in Section 3, limits only the power to adopt local police and sanitary regulations and does not in anyway impinge on the power of local self-government.

5. Statewide Concern ✕

The Supreme Court of Ohio in Village of Beachwood v. Board of Elections of Cuyahoga County, *supra*, characterized the power of local self-government as that power to enact municipal legislation which pertains to local problems, having no extra-territorial affects. The only limitation on the exercise of this power is the doctrine of statewide concern, [City of Cincinnati v. Gamble, 138 Ohio St. 220, 34 NE 2nd 226, (1941)]. Under this principle, if a matter traditionally placed in the ambit of local municipal control, takes on a new significance, and constitutes a statewide problem, the matter is for the General Assembly and subject to statewide control, [State ex rel McElroy v. City of Akron, 173 Ohio St. 189, 181 NE 2nd 26, (1962)].



6. Charter v Non Charter Municipalities

As mentioned previously, a municipality may choose one of three forms of organization and operation (1) the charter form of government under Article 18, Section 7; (2) the additional laws concept under Article 18, Section 2; and (3) under the general laws of the state. The latter two forms are hereinafter referred to as non-charter municipalities.

As indicated in City of Toledo vs. Lynch, supra, in order to avoid government under general laws, the municipality must take the affirmative step of enacting one of the two remaining forms of government. If it fails to enact a charter under Article 18, Section 7, then it must exercise its powers of local self government consistent with the general law. While on its face, this appears to be in derogation of the broad grant of power given to municipalities under Section 3, logic dictates the result.

In State ex rel Petit vs. Wagner 170 Ohio St. 297, 164 NE 2nd 574, (1960) the Supreme Court stated:

It is apparent therefore, that by what they said, the people expressed an intention that, in the absence of the adoption of a charter pursuant to Section 7 or of the adoption of any additional laws for the government of municipalities adopting the same, pursuant to Section 2, the general laws for the government of municipalities authorized by Section 2 were to control a municipality in the exercise of the powers of local self-government conferred upon it by Section 3. Where a charter is adopted, then, under Section 7, a municipality may, subject to the provisions and limitations

of Section 3, (not Sections 2 and 3) exercise thereunder (under the charter instead of under general laws) all powers of local self government. The only limiting provision then applicable is that specified in Section 3, that local police, sanitary and other similar regulations shall not conflict with general laws.

Thus, it is evident that when a municipality has enacted a charter, it proceeds to govern under that charter rather than pursuant to Article 18, Section 3. An ordinance, passed by a charter municipality and dealing with local self-government, is valid even though it is at variance with a state statute, [State ex rel Canada v Phillips, *supra*, Leavers v City of Canton, 1 Ohio St. 2d 33, 203 NE 2d 354, (1964)]. In the absence of an enumerated power in its charter, a municipality may still legislate, as to matters of local self-government. However, it is no longer operating under Article 18, Section 7 but instead under Article 18, Section 3. It may exercise such power unless there is some conflicting state statute. While, seemingly, this is inconsistent with what has been discussed previously, the reconciliation is based upon the fact that the statute enacted by the legislature may only specify the procedure for the implementation of local self-governmental powers. [State v De France 89 Ohio App. 1, 100 NE 2d 689 (1950)].

The Supreme Court in Morris v Roseman, 162 Ohio St. 447, 123 NE 2d 419 (1954) attempted to clarify the situation. The case dealt with a non-charter municipality, but the same logic applies to a charter municipality exercising an unenumerated power.

By Sections 3 and 7 of Article 18 of the Constitution, a municipality has the power to govern itself locally in certain respects. The statutes in no way inhibit such power but merely prescribe an orderly method for the exercise of such power where the municipality has not adopted a charter and set up its own governmental machinery thereunder.

In other words, a municipality may exercise all powers of local self-government. However, if the charter does not delineate the procedure for enactment of a particular type of ordinance, where the legislature by statute has prescribed a procedure, the municipality must follow the procedure designated by statute, [Village of Wintersville v Argo Sales Co.Inc., 35 Ohio St. 148, 299 NE 2d 269 (1973)].

A non-charter municipality may, consistent with the broad grant contained in Article 18, Section 3, exercise all powers of local self-government, [Village of Perrysburg v Ridgway, 108 Ohio St 245, 140 NE 595 (1923)]. However, a non-charter municipality must, in the passage of its legislation, follow the procedure presented by the statutes enacted pursuant to Article 18, Section 2 of the Constitution, (State ex rel Petit v Wagner 170 Ohio St. 297 164 NE 2d 574, (1960), Morris v Roseman supra, Village of Wintersville v Argo Sales Co., Inc., supra).

## 7. Land Use Control

### a. Purposes and Powers

The purpose of a zoning ordinance is to separate the territory of a municipal corporation into zones so that the several uses for which such property may be legally employed will be designated in order that the

greatest benefit as to one use may be achieved with the least possible detriment to property employed for other uses, [Criterion Service vs. City of East Cleveland, Ohio App., 88 NE 2nd 300, (1949)]. The Supreme Court of the United States in Euclid vs. Ambler Realty Company, 272 US 365, 47 S. Ct. 114 (1926) held that where a complete plan of all the territory of a municipal corporation is worked out with reasonable regard for the general rights of all, such ordinance is a constitutional exercise of the police power of such municipal corporation. The Court adopted the language of Town of Windsor vs. Whitney, 95 Conn. 357, as that which best described the purposes and goals of a comprehensive zoning plan.

It betters the health and safety of the community; it betters the transportation facilities; and adds to the appearance and wholesomeness of the place, and as a consequence it reacts upon the morals and spiritual power of the people who live under such surroundings.

In order to determine the overall validity of any zoning enactment the underlying question is whether or not the ordinance, based upon the state's police power, is related to the safety, health and welfare of the community. Inherent in any such analysis is a balancing of interests between the rights of the property owner and the right of the community to regulate the use of the property for its general welfare. If, after balancing such interests, it is found that there is no relationship between the community needs and the restrictions imposed upon the property, an unconstitutional taking has occurred, [Pure Oil Division of Union Oil Company of California vs. City of Brookpark, 26 Ohio App. 2nd 153, 269 NE 2nd 853, (1971); Pritz vs. Messer 112 Ohio St. 628, 149 NE 30 (1925)].

Since the case of Pritz vs. Messer, supra, in 1925, the power and authority of an Ohio municipality to zone has never really been subject to question. In interpreting what is now known as 713.01 et seq, the Court stated:

It is evident that these legislative provisions authorized the enactment of ordinances such as that involved herein. Furthermore, if such a legislative enactment had not been made, the majority of the Court are of the opinion that under the home rule provision of the Constitution (Article 18, Section 3) the regulation of the bulk, area and use of buildings is a function of local self-government and that therefore the municipality is doubly empowered to enact legislation upon this subject, having been given such authority by the legislature and by the Constitution.

Subsequently courts have, with only minor departures, classified the power to zone as a power of local self-government. A notable exception is found in Broad-Miami Company vs. Board of Zoning Adjustments of the City of Columbus, 185 NE 2nd 76 (1959):

Zoning is the exercise of the police power and thus under provisions of Article 18, Section 3 of the Constitution must not be in conflict with general laws.

Nevertheless, courts almost uniformly have classified zoning as a power of local self-government, (Morris vs. Roseman, supra).

As noted earlier, the powers granted to a municipal corporation under the Constitution in Article 18, Section 3 are not dependent upon the existence of a charter, (Village of Perrysburg vs. Ridgeway, supra). Instead the only effect that laws enacted by the General Assembly may have on municipalities is in regard to the methods and procedures used by the local legislative bodies in the adoption of ordinances pursuant to the

powers of local self-government, (Morris vs. Roseman, supra).

As a conclusion, it may be stated therefore that the General Assembly may not enact laws which touch the substance of the zoning power, i. e. the General Assembly may not tell a municipal corporation what it can zone unless it is a matter of statewide concern. On the other hand, consistent with Morris vs. Roseman, supra, the legislature may enact laws setting forth procedures for the exercise of the zoning power.

In State v DeFrance, supra, it was held that:

Upon the adoption of a charter, the power granted to municipalities under the Constituion should be then exercised under the provisions of the charter rather than directly under Section 3 of Article 18 of the Constitution; and that a charter city thus becomes imperium in imperio.

As a result, a charter municipality may disregard the zoning procedures included in Section 713.01 et seq. and instead follow the procedures as set forth in its charter. While such a decision may be solely based upon Article 18, Section 7 and the exercises of powers of local self-government, the Court felt that Section 713.14 yields unrestricted powers to municipalities in respect to zoning, if such powers are granted by the municipal charter. Section 713.14 states:

Section 713.06 to 713.12, inclusive, of the Revised Code do not repeal, reduce or modify any power granted by law or charter to any municipal corporation or the legislative authority thereof, or impair or restrict the power of any municipal corporation under Article 18 of the Ohio Constituion.

A similar result was reached in the case of Vito vs. the City of Garfield Heights, 200 NE 2nd 501 (1962).

When dealing with municipalities which have enacted a charter, but have failed to enact, therein, provisions relating to the procedure for adopting zoning ordinances, the courts have uniformly agreed that the procedures as outlined in Section 713.01 et seq. must be followed, [State ex rel Kling vs. Nielson, 103 Ohio App. 60, 144 NE 2nd 278 (1957); State ex rel Gulf Refining Company vs. DeFrance, supra, State ex rel Fairmount Center Co. vs. Arnold, 133 Ohio St. 259, 34 NE 2d 777 (1941)].

Lastly, where a municipality has failed to exercise powers of local self-government under a charter, it must enact zoning measures pursuant to the procedure as outlined in Section 701.01 et seq. [Morris vs. Roseman, supra; Kligler vs. City of Elyria, 2 O. App 2nd 181, 207 NE 2nd 389, (1965)].

In 1973, the Ohio Supreme Court clarified this premise. The Court answered the question of whether or not a non-charter municipality could enact an emergency zoning ordinance in a manner contrary to the requirements of Section 713.12 it stated:

Section 3 of Article 18 of the Ohio Constitution which confers home rule power, does not in it of itself empower an Ohio non-charter municipality to enact an emergency zoning ordinance; and such a municipality in the enactment of a zoning ordinance must comply with Section 713.12 which requires a public hearing on the proposed ordinance, preceded by a thirty-day

notice of the time and place of hearing.

As a result, we reach the following conclusion: unless a municipal corporation has adopted a charter setting forth a procedure for the enactment of zoning ordinances, the municipality must follow the statutory guidelines and procedures set forth in Section 713.01 et seq.

b. Limitations On Zoning Power

(1) General Limitations

Zoning regulations are adopted and enforced pursuant to the police power under which government may enact laws in furtherance of the public safety, health, morals or general welfare. All such regulations must be justified on the basis of their tendency to serve one or more of these ends. (Clifton Hill Realty Company vs. Cincinnati 27 OLA 321, 21 NE 2nd 993; Cleveland Trust Company vs. Brooklyn, 92 Ohio App 391, 110 NE 2nd 440).

The Ohio Supreme Court declared the test and standards for validity for a zoning ordinance:

Whether an exercise of the police power does bear a real and substantial relation to the public health, safety, morals or general welfare of the public and whether it is unreasonable or arbitrary are questions which are committed in the first instance to the judgment and discretion of the legislative body, and unless the decisions of such legislative body on these questions appear to be clearly erroneous the Courts will not invalidate them. Benjamin v City of Columbus, 167 Ohio St 103, 146 NE 2d 854.

(2) Aesthetics

The concept of public welfare, as used to justify the enactment of a zoning ordinance, is broad and inclusive. The



values it encompasses are physical, spiritual and aesthetic as well as monetary. It is therefore within the power of the local government to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. Nevertheless, it has been held that aesthetic considerations alone are insufficient to support the invocations of the police power, although if a regulation finds a reasonable justification serving a generally recognized ground for the exercise of that power, the fact that aesthetic considerations play a part in its adoption, does not affect its validity, (Pritz vs. Messer, supra; Fifth Urban Inc., vs. Board of Building Standards 40 Ohio App 2d 389, 320 NE 2d 727).

The Court of Appeals of Cuyahoga County has held that an ordinance designed to protect values and to maintain a high character of community development was in the public interest and contributed to the community's general welfare. While admittedly, aesthetic considerations played a part in the enactment of this ordinance, the Court found that the immediate goals and purposes of the zoning ordinance were in the public interest and promoted the general welfare. The fact that an aesthetic benefit incidentally resulted did not invalidate the exercise of power, Reid vs. The Architectural Board of Review of the City of Cleveland Heights, 119 Ohio App 2d 353, 192 NE 2d 74 (1963).

(3) Taking

It is well recognized that almost every exercise of the police power will necessarily interfere with the enjoyment of liberty or acquisition, possession and production of property within the meaning of Article 1, Section 1 of the Ohio Constitution, or involve an injury to a person within the meaning of Article 1, Section 19 of the Ohio Constitution or deprive a person of property within the meaning of the Fifth and Fourteenth Amendments of the United States Constitution. Nevertheless, an exercise of the police power will be valid if it bears a real and substantial relation to the public health, safety, morals or general welfare and it is not unreasonable and arbitrary. In

Pennsylvania Coal Company vs. Mahon, 43 S. Ct. 158 (1922) Justice

Holmes stated:

The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. A similar assumption is made in the decisions upon the Fourteenth Amendment. When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualifications more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States.

Thus, when it is found that the restriction imposed will prevent an individual from making reasonable use of his property or that the zoning ordinance bears no real or substantial relationship to the public

health, safety, welfare or morals, the restriction imposed is invalid and constitutes a taking, for which just compensation must be provided.

Courts have been guided by the principle that the value of one's property is in its use, and when the property's use has become so restricted and encumbered that its use is impaired, its value is impaired and there has been a taking which demands just and fair compensation.

#### (4) Prior Non-Conforming Use

A municipality has no power to zone out of existence a prior non-conforming use. A prior non-conforming use exists when a particular use is established on a parcel of land and a subsequent zoning ordinance, attempting to prohibit that previously established use, is enacted. In order to qualify as a prior non-conforming use, the use must have been in existence at the time of the passage of the ordinance and must have continued without interruption or expansion ever since [Akron vs. Chapman 160 Ohio State 382, 116 NE 2nd 697, (1953); Nolden vs. East Cleveland City Commission, 12 Ohio Misc 205, 232 NE 2nd 421, (1966)].

The prior non-conforming use has gained protection through the adoption of enabling statutes by the legislative which apply to non-charter cities and cities governed under a charter but without any effective zoning legislation included in the charter. The enabling legislation does not apply to a charter city which has enacted zoning legislation because general law enacted by the legislature will not take precedence over charter provisions. Instead, as to charter cities, an existing use is the subject

of a vested right in the user and prohibiting such use constitutes a confiscatory taking of property without due process of law, (Akron vs. Chapman, supra ) or is retroactive and hence unconstitutional, (Kessler vs. Smith, 166 Ohio St. 360,142 NE 2nd 231).

The general law for non-charter cities and cities which have adopted charters but have chosen to exclude zoning methods, is Section 713.15 which provides:

The lawful use of any dwelling, building or structure and of any land or premises, as existing and lawful at the time of enacting a zoning ordinance or amendment thereto, may be continued, although such use does not conform with the provisions of such ordinance or amendment . . . The municipal corporation shall provide in any zoning ordinance for the completion, restoration, reconstruction, extension, or substitution of non-conforming uses upon such reasonable terms as are set forth in the zoning ordinance.

#### 8. Administration of Authority

There are 159 municipal corporations in the nine counties of the Ohio Lake Erie Shore Zone Planning Region. Each has substantial authority to control land uses in the shore zone, but makes land use decisions separate and apart from each other and without any common purpose.

The zoning procedures of all municipal corporations have many similarities. All cities have planning commissions with the public representatives serving six year terms. Each planning commission

makes recommendations to the legislative body of the community for adopting, changing, or amending zoning ordinances.

The legislative body may approve or disapprove a planning commission recommendation. After the required public hearing, the legislative body may act by a majority vote to adopt the regulation or ordinance.

Some communities in the Shore Zone Planning Region have large planning staffs with substantial expertise in land-use regulation. Others have only limited expertise available to them, and many have virtually no planning staff to rely on for advice. However, officials interviewed in this study indicated that professional planning advice is not always a major consideration in the decision-making process.

Local officials are virtually unanimous in the feeling that they are best able to make decisions which effect their communities and express reluctance to relinquish any authority regarding land use matters. A big city mayor said, "The local people understand the problems best. The state shouldn't be able to override a council decision."

At the same time, local officials who were surveyed and interviewed acknowledged the need for a comprehensive approach to the Lake Erie Shore Zone and favored the state as the level of government best able to fashion that approach. In the Ohio Department of Natural Resources survey of local officials, 48 per cent indicated

the state should assume a greater role in planning while 25 per cent urged a reduced state involvement in planning. Further, they favored the state assuming a larger regulatory role by 36 per cent to 32 per cent. In the survey conducted in this legal and administrative analysis, 55 per cent urged the establishment of state standards and local implementation of those standards.

Clearly, local government is not able to deal with the overall management of the shore zone. However, it is equally clear that the men and women who administer local government in the Shore Zone are not willing to trust its future in their communities to strangers in Columbus.

Whatever procedures now exist for intergovernmental coordination between the state and its cities must clearly be better defined and strengthened. Elected officials at the city level feel that they are the ones subjected to public pressure for land use decisions, therefore they feel that they should make those decisions.

Finally, the study showed that the press of day-to-day business can easily blur "the long view." As one mayor said, "Planning for the shoreline would have been useful 40 years ago. Today, we're trying to keep the shoreline we have from washing away."

### C. TOWNSHIPS

#### 1. Creation and Purposes

A township is a creature of statute and its existence is founded upon Section 503.01 which provides:

Each civil township is a body politic and corporate,

for the purpose of enjoying and exercising the rights and privileges conferred upon it by law.

As such, the township derives all of its power and authority from the legislature rather than from any constitutional grant, [State ex rel Schramm vs. Avers, 158 Ohio State 30, 106 NE 2nd 630 (1952)]. Therein the Ohio Supreme Court stated:

Townships are creatures of law and have only such authority as is conferred on them by law. Therefore, the question is not whether townships are prohibited from exercising authority. Rather it is whether townships have such authority conferred on them by law.

As a result, Ohio townships have no inherent or constitutionally granted police power, the power upon which zoning legislation is based. Therefore the township officials have no authority to enact zoning regulations which are in contravention of general law. [Yorkavitz vs. Board of Township Trustees of Columbia Township, 166 Ohio St. 349, 142 NE 2nd 655, (1957)]. Instead the township must follow the laws as set forth in Section 519.01 et seq.

## 2. Limitations On Township Zoning

While municipal corporations are prohibited from zoning out a prior non-conforming use based on constitutional provisions given the nature of a township, it is apparent that the legislature may impose direct zoning restraints on townships. Indeed, Section 519.19 so provides. This section, similar to Section 713.15, which limits municipal zoning as it relates to prior non-conforming uses, places such a direct restriction

on township authority. In addition, Section 519.21 severely limits the authority of the township to substantively zone out certain uses. It says:

Sections 519.02 to 519.25 inclusive confer no power on townships to prohibit the use of any land for agricultural purposes or incidental use, no power to prescribe the location, construction, alteration, maintenance, removal, or enlargement of any buildings or structures of any public utility or railroad, or the use of land by any public utility or railroad for the operation of its business and no power to prohibit the use of any land for the construction, alteration or use of any building for the maintenance and operation of any mercantile or retail establishment, in areas zoned for trade or industry.

### 3. Administration of Authority

Zoning is the major authority exercised by township trustees. "It's our big thing" said one official. The zoning procedures which townships must follow are clearly set out in Chapter 519 as previously discussed. The township trustees may resolve to zone a piece of unincorporated land within their township independently or, if 8 per cent of the electors petition them to do so.

The trustees then appoint a zoning commission to study the resolution. After studying and before submitting its recommendations to the trustees, the commission must hold a public hearing. It then must submit the resolution to the county or regional planning commission. If either of these commissions disapproves or recommends changing the resolution, another public hearing must be held before the township zoning commission can present its recommendations to the trustees.



The township trustees must hold a public hearing before voting to adopt a zoning resolution. If the resolution is adopted by the trustees, it then goes on the ballot and a majority of the electors in the zoned area must vote in favor of the plan before it may take effect.

Every township with zoning regulations must have a zoning board of appeals which can authorize variances from the zoning plan. An individual may appeal the decision of the board of zoning appeals to the Common Pleas Court.

Zoning plans at the township level are based on rather narrow geographic considerations -- what the people of that township want. One official from a shore zone township said, "Our township is healthy because we listen to our people. That's why \$.75 of every tax dollar comes from industry." He went on to say that "we have too much government now and we need to decentralize."

#### D. COUNTIES

##### 1. Creation and Purpose

The function of a county is to serve as an agency of the state for purposes of political organization and local administration. [Blacker vs. Wiethe, \_\_Ohio Misc\_\_, 231 NE 2nd 888 (1967)]. As a result, it is a wholly subordinate political subdivision, deriving whatever authority it exercises from legislative enactment. [McDonald vs. City of Columbus, 12 O. App 2nd 150, 231 NE 2nd 219 (1967)]. Under Article 10, Section 3 of the Ohio Constitution, a county may adopt a charter and exercise all

constitutional and legislative powers vested in municipalities. Section 1 of Article 10 provides:

The general assembly shall provide by general law for the organization and government of counties and may by general law provide for alternative forms of county government.

This seeming conflict has never been resolved as the actual question has never been before any court.

Given the fact that as of 1967 no Ohio county had enacted a charter the Court of Appeals for Franklin County held:

Any exercise of the police power must be predicated upon a delegation of that power to the county by the legislature. McDonald v. City of Columbus

## 2. Limitation On Zoning

The county power to zone is (like a township) limited to that which is expressly delegated to them by statute. McDonald vs. City of Columbus, supra, Yorkavitz vs. Board of Township Trustees of Columbia Township, supra. Section 303.01 et seq. County Rural Zoning, sets forth the zoning authority vested in counties. Section 303.02 specifically grants to the county the right to zone, but immediately limits the exercise of the power, to unincorporated territory within the county. Moreover, Section 303.21 places the same limitation on counties as is imposed on townships by virtue of Section 519.21 i.e. they may not zone out an agricultural use, restrict the building or use of facilities of a utility or common carrier, or prohibit within area zoned for trade or industry, mercantile or retail establishments.

Lastly, Section 303.22 provides that where township regulations have been adopted prior to the enactment of a county rural zoning plan and the plan covers area included within the township plan, the township plan shall prevail unless the majority of voters in the township approve the county plan.

### 3. Administration of Authority

It is apparent, that county government has only minimal zoning authority and with very few exceptions, the coastal zone has either municipal or township zoning. However, county government exercises powers which affect many aspects of life in the coastal zone.

County government may sell bonds and levy taxes to use in the construction and maintenance of county buildings such as libraries, mental health facilities and jails. In addition, it may purchase land for use as county parks, social centers and fairgrounds.

Other areas where counties have power to act are in the construction and improvement of roads and bridges, the leasing of mineral rights on and under county-owned land and the improvement of harbor facilities.

County government in Ohio tends to be fragmented because of the number of independently elected county office holders. This fragmentation and political differences may make development of a unified policy difficult.

County officials, however, are willing, the study found, to allow the state to play a more active role in shore zone planning and management. One commissioner felt that the state should purchase as much of the property along Lake Erie as possible and preserve it for recreation. He felt that the state should have ultimate zoning authority along Lake Erie. Another said that "the state should administer the program and it should have teeth in it".

The county commissioners surveyed and interviewed seemed aware that the Lake Erie shore zone is a special resource, one of greater than local concern. They seemed willing to work with the State in developing the coastal zone in an intelligent manner. It appears that they would be willing to give up the little authority they have over land use regulation as long as their other powers are left intact.

#### E. REGIONAL PLANNING COMMISSIONS

##### 1. Creation and Purpose

A regional planning commission as authorized by Section 713.21 may be created by a group of local governmental entities, consisting of villages, municipalities and/or counties. The purpose of a Regional Planning Commission is to make studies, maps, plans and recommendations concerning the physical, environmental, social, economic and other aspects of the region. While this broad planning authority, granted to the commission, appears to be as extensive as zoning power, it is, in effect, far different. As stated in State ex rel Kearns vs. Ohio Power

Company, 163 Ohio State 451, 127 NE 2nd 394.

Zoning and planning are not synonymous; zoning is concerned chiefly with the use and regulation of buildings and structures, whereas planning is of broader scope and significance and embraces the systematic and orderly development of a community with particular regard for streets, parks, industrial and commercial undertakings, civic beauty and other kindred matters properly included within the police power.

## 2. Administration of Authority

Regional planning commissions serve as regional clearing houses in the areas of transportation, recreation, water and sewers, and other areas of regional concern; and, as planning-advisory agencies for their members. They also serve as the A-95 clearing house for their region.

The A-95 Review Process is the primary tool of the federal government to assure that federal expenditures are not duplicated within a region. The procedure requires that units of government applying for federal funds must submit applications to the review process prior to submitting them for funding. All governmental entities within a region are then notified of the pending application and nature of the proposed project. They are provided an opportunity to review and comment on the proposal in question. The reviews and comments submitted are forwarded to the federal funding agencies for consideration prior to acting on the application.

The A-95 Review Process is today the only comprehensive mechanism existing in the shore zone for coordination of governmental projects involving capital funds.

While regional planning agencies have little direct authority they are helpful in coordinating activities or projects within their region.

Regional planning agencies are comprised of professional, full-time staff and committees which consist of representatives from the member governments. These committees, with staff assistance, make recommendations to the executive committee. The executive committee, composed of representatives of the member governments, acts on the recommendations.

Regional planning commissions are clearly sensitive to many of the problems facing the Lake Erie Shore Zone and to the fact that they are of greater than local concern. However, from our discussions with regional officials, it seems clear that they are not interested in becoming a central power in managing the coastal zone. The Toledo Metropolitan Area Council of Governments has been negotiating with the Ohio Department of Natural Resources for designation as the body to coordinate planning in the Maumee Bay estuary, but they see themselves as coordinators and planners and not as decision makers. This feeling is common to the regional planning agencies. They want to have input, provide technical assistance and help coordinate activities along the coastal zone; however, they do not feel they are the proper level of government to do the actual managing of zone activities. One

regional planning commission staff member said flatly, "we'll work with the state and our members but we don't intend to be a regulatory agency."

Further information concerning the scope, powers and duties of Regional Planning Commissions is included in the Appendix.

### III

#### UNITED STATES GOVERNMENT FEDERAL LEGISLATION AFFECTING THE SHORE ZONE

##### A. FEDERAL WATER POLLUTION CONTROL ACT OF 1972

The Federal Water Pollution Control Act of 1972, with an eye toward restoring and maintaining the chemical, physical and biological integrity of the nation's waters, established a national goal to be attained by 1985, of eliminating the discharge of pollutants into navigable waters, a national policy of preventing discharges of toxic pollutants and a national desire that development and implementation of area-wide waste treatment in each state or region, be undertaken.

The highlight of this Act, insofar, as it affects the Lake Erie Shore Zone is contained in Section 103. Therein, it is provided that the administrator of the Federal Environmental Protection Agency may, in cooperation with other governmental entities:

...develop preliminary plans for the elimination or control of pollution within all or any part of the watersheds of the Great Lakes.

More specifically, and touching solely on Lake Erie, is Section 103

(D)(1) which provides:

In recognition of the serious conditions which exist in Lake Erie, the Secretary of the Army, acting through the Chief of Engineers is directed to design



and develop a demonstration waste water management program for the rehabilitation and environmental repair of Lake Erie. ... This authority is in addition to, and not in lieu of, other waste water studies aimed at eliminating pollution emanating from selective sources around Lake Erie.

Generally, the Act provides incentives, through a grant program, for state and regional implementation of area-wide waste treatment, management plans and practices and the adoption of state water quality standards which are to be in accordance with the standards as set forth by regulation of the administrator of the Environmental Protection Agency. In addition to this seemingly harsh prohibition on discharge of materials and pollutants into navigable waters, a permit system has been set up to allow certain discharges.

#### B. CLEAN AIR ACT OF 1970

The Clean Air Act of 1970 was adopted with the thought in mind that the prevention and control of air pollution at its source is the primary responsibility of state and local governments and that the growth in the amount and complexity of air pollution brought about by urbanization and industrial development has resulted in mounting dangers to the public health and welfare.

Pursuant to authorization contained in the Act, the administrator may make grants to air pollution control agencies for developing, establishing, improving and maintaining any program for the prevention and control of air pollution. Under Section 107, primary responsibility

has been delegated to the states and thereunder each state must submit an implementation plan which will specify the manner in which national primary and secondary air quality standards will be achieved and maintained within each air quality control region in that state.

Under Section 110 (A) (1) each state has the obligation of, after the promulgation of a national primary ambient air quality standard, devising a plan which provides for implementation and enforcement of said primary standards in each air quality region within the state.

In addition to the responsibilities assigned for regulating stationary sources of pollution, Title II provides for establishment of standards for the emission of pollutants by motor vehicles. Under Section 206 (A) (1) the administrator of the Environmental Protection Agency is required to test any new motor vehicle or motor vehicle engine so as to determine whether such vehicle conforms with standards adopted by the administrator.

Under Section 307 (F) of the Coastal Zone Management Act of 1972, it is stated:

Nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act or the Clean Air Act (2) established by the Federal government or by any state or local government pursuant to said Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

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As a result the following conclusion may be reached: The Coastal Zone Management Act does not limit nor abrogate any of the requirements, duties and pronouncements established in the Federal Water Pollution Control Act or the Clean Air Act. Instead, these three Acts are intended to work hand in hand and the administration of each of these laws is to be done with full cooperation, so as to best effectuate the purposes and goals of attaining a stable, environmental and ecological balance.

#### C. FLOOD DISASTER PROTECTION ACT OF 1973

In enacting the Flood Disaster Protection Act of 1973, the United States Congress found that annual losses throughout the nation from floods and mud slides were increasing, partly as a result of the accelerating development and concentration of population in areas of flood hazards. Since development in these areas has been made possible by the availability of mortgage loans by savings and loans, banks and other financial institutions, Congress devised a graduated plan whereby no insured institution could grant, on or after July 1, 1975, a loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development, as an area having special flood hazards, unless the community in which such area is located is participating in the National Flood Insurance Program.

The federal government makes highly subsidized flood insurance

available to property owners within a flood prone area in return for the adoption by the community of land use and control measures consistent with criteria prescribed by HUD to reduce or avoid flood damage in connection with future construction within the areas of the flood plain. The program does not require any flood proofing or other structural alterations of buildings retroactively but does require certain measures be taken with new construction.

If a given locale does not participate in a program, under this Act, no loan may be granted by an insured institution on or after July 1, 1975.

It is obvious that the Shore Zone Management Program must work hand in hand with the Flood Disaster Protection Act of 1973. The criteria laid down for permissible land uses within the shore zone must be consistent with HUD criteria for special flood hazard areas.

#### D. NATIONAL ENVIRONMENTAL POLICY ACT

In 1969, the United States Congress enacted the National Environmental Policy Act declaring it the national policy to "Encourage productive and enjoyable harmony between man and his environment." (42 USC 4321) This comprehensive statutory scheme was enacted to insure that environmental factors were systematically considered and environmental values implemented in federal administrative decisions.

The Act directs:

That to the fullest extent possible, all agencies of the Federal Government shall include in every

recommendation or report on proposals for legislation and other major federal action significantly affecting the quality of the human environment, a detailed statement by the responsible official on ... the environmental impact of the proposed action.

In Citizens Organized to Defend the Environment, Inc. vs. John Volpe,

353 F. Supp 520 (1972) the Court defined a major federal action as,

"One that requires substantial planning, time, resources or expenditure." The Court stated that a federal action significantly affecting the quality of human environment is, "One that has an important or meaningful effect, directly or indirectly, on any of the many facets of man's environment."

State actions not involving expenditures are not covered by this Act. No impact statement need be filed under the National Environment Policy Act, if the program or action is being initiated and fully conducted by the State.

In LaRaza Unida vs. Volpe, 337 F. Supp. 221, the Court held that state highways constructed without federal funds and with no intention to seek federal funds were not covered by the National Environmental Policy Act. In addition to the inferential conclusion from the case law, Section 923.5 of the rules and regulations adopted by the Department of Commerce and the National Oceanic and Atmospheric Administration specifically states:

Individual environmental impact statements will be prepared by the National Oceanic and Atmospheric Administration as an integral part of the review and approval process of the state Coastal Zone Management Programs.

Thus it would seem to be conclusively established that the State does not carry the burden of drafting environmental impact statements for the planning and management of the Coastal Zone Program. It is unclear precisely what requirements will attach to other federally funded activities intended to implement the management program.

#### E. RIVERS AND HARBORS ACT OF 1899

This Act provides in part that bridges and other obstructions may be built across navigable waters only with the consent of the Chief of Engineers and Secretary of the Army, (33 USC 401, 403) and that it shall be unlawful to discharge refuse matter (other than that flowing from the streets and sewers and passing therefrom in a liquid state) into any navigable waters of the United States or into a tributary of any navigable water: (Section 407) As a means of alleviating any harsh result that may occur as a result of the strict enforcement of the preceding:

The Secretary of the Army, whenever the Chief of Engineers determines that anchorage or navigation will not be impaired thereby, may permit the deposit of any material above mentioned in navigable waters. (Section 407)

The United States Supreme Court in United States vs. Standard Oil Company 384 US 224, 86 S. Ct. 1427 (1966) held that Section 407 (therein referred to as Section 13) imposed a flat ban on the unauthorized deposit of foreign substances into navigable waters, regardless of the effect on navigation. As a result, the Corps of Engineers must consider

pollution and other environmental factors, and not just potential effect on navigation, in passing upon applications for permits to discharge.

In United States vs. Pennsylvania Industrial Chemical Corp., 411 US 655, 93 S. Ct. 1804 (1973) the United States Supreme Court addressed itself to the seeming inconsistencies and conflicts between the Water Quality Acts and the Rivers and Harbors Act. Therein, it was contended that if a discharge met the minimum water quality standards adopted under pollution prevention and abatement programs, then said discharge could not be prohibited under the Rivers and Harbors Act of 1899. The Court stated:

Nothing in the statutes or their parent statutes operated to permit discharges that would otherwise be prohibited by Section 13 (herein referred to as Section 407) and in each case Congress specifically provided that the new statutes were not to be construed as affecting or impairing the provisions of Section 13 (Section 407) of the Rivers and Harbors Act of 1899.

As a result, the Chief of Engineers may still prohibit discharge of certain materials under the Rivers and Harbors Act, even though such discharge may be in compliance with the minimum water quality standards as set forth by state agencies.

In Kalur vs. Resor, 335 F. Supp. 1 (1971) the authority of the Chief of Engineers to issue permits allowing discharges into non-navigable waters of the United States, was challenged. The Court concluded:

The first part (of Section 407) of prohibition applies by its terms to any navigable water or any tributary



of any navigable water. Discharges of refuse matter are clearly prohibited in both navigable waters and in non-navigable tributaries of navigable waters. The second part of the section pertaining to the permits provision is more limited in scope.

The Secretary of the Army may:

Permit the deposit of any material above mentioned in navigable waters. This separate proviso makes no mention of tributaries in contrast to the specific language in the prohibition part of the section. The conclusion that is drawn from the language is that the Corps of Engineers has no authority to authorize deposits of refuse matter in non-navigable tributaries of navigable waterways.

## IV

### EXISTING AUTHORITY OF THE STATE OF OHIO

#### A. EXECUTIVE POWER

##### 1. Generally

The fundamental principal upon which the government of Ohio is based is the doctrine of separation of powers. The governmental powers are divided among the executive, legislative and judicial branches. Each branch is separate and distinct from the other two.

In keeping with this scheme of government, the Governor has no power to invade the legislative area of validly-enacted statutes. The Governor has no power to modify or interpret such legislation. The power to change any existing laws, or to enact new laws, is vested solely in the Legislature.

The supreme executive power of the State is vested in the Governor. He has executive powers that are expressly conferred in Article III, Section 5 of the Ohio Constitution, and those conferred by legislative enactments. He also has incidental powers which are necessary to effectuate the express powers. The Governor has the responsibility to enforce existing legislation. However, this power is limited to enforcing the laws as written and contains no ancillary powers

to interpret or change any laws.

The Legislature can add to or withhold any additional executive authority at its discretion. A further limitation on the Governor's executive authority is the interpretation given to the executive powers by the judicial branch of the government. The powers granted by Article III are the only executive powers to which the Governor is absolutely entitled. If the General Assembly so decided, it could take away all of his additional executive powers.

No other executive officer is authorized to control the decision making power of the Governor. On the other hand, the Governor cannot control the discretion of subordinate officers by executive order, when said officers are acting within the scope of their authority. He does, however, possess the power of review or the power of approval by virtue of the Act which creates a particular state office and defines the incidental powers, (State ex rel Andrews Asphalt Co. v. Donahey, 112 Ohio St. 356, 147 NE 2nd 501).

The Governor has no power to issue executive orders in excess of his specifically granted powers. Section 6 of Article III provides that the Governor may request information from the other executive officers.

The Legislature may provide a source of expanded executive authority to the Governor. Three examples are:

1) Statutes which require the Governor's approval to be carried out such as in the issuance of permits for the removal of minerals from the bed of Lake Erie.

2) Statutes authorizing the Governor to appoint directors of state departments and agencies to serve at the pleasure of the Governor.

3) Statutes relating to the public safety, health and morals, and are silent on who has the power of enforcement have been interpreted to give the Governor that enforcement power, [ Cuyahoga County Funeral Directors Assn. v. Sunset Mortuary Inc. 88 OLA 568, 181 NE 2nd 309 (1962)]. The Governor can only control other executive officers by executive order when he has been specifically given such a power by the legislature or the Constitution.

## 2. Administration of Authority

The authority vested in the Governor of Ohio by the Constitution of the State of Ohio and by a variety of state statutes is administered by numerous state department, boards and commissions.

Administration of gubernatorial authority in matters directly related to the Ohio Lake Erie Shore Zone is conducted primarily by a limited number of state departments. Those most directly involved in Lake Erie Shore Zone matters are the Ohio Department of

Natural Resources, the Ohio Environmental Protection Agency, the Department of Economic and Community Development, the Ohio Department of Transportation, the Ohio Department of Administrative Services, especially, its Public Works Division, the Office of Budget and Management, the Public Utilities Commission, the Ohio Department of Agriculture, the Environmental Board of Review, the Power Citing Commission, and the Ohio Water Development Authority. The administrators of the aforementioned derive their power directly from the Governor by virtue of his appointing authority. The Governor further has a role in appointing some members of the Ohio Historical Society.

In 1973 a Governor's Task Force on the Lake Erie Fisheries was initiated with a direct interest in the shore zone. Two additional agencies with direct interest in the Lake Erie Shore Zone and substantial ability to effect it are The Office of the Attorney General, elected independently of the Governor; and, the State University system, especially the Ohio State University with substantial research activities in the shore zone. Administrative coordination of these department, agencies and institutions, as well as many other arms of State Government with an indirect effect on the shore zone, can be described as spotty.

Obviously the highest degree of coordination can be

accomplished among those agencies headed by single directors who serve at the pleasure of the Governor, e.g., The Department of Natural Resources, The Department of Transportation, etc. However, even in those situations where the Governor exercises direct control, coordination of shore zone activities is minimal. Virtually the only mechanism for establishing central direction and coordination of shore zone activities among department is the Governor's cabinet; that portion of the cabinet directly concerned with shore zone matters. There does not exist a cabinet level unit concerned with the shore zone at this time.

In general terms, whatever coordination occurs, arises when state officials below the director level in various departments are unable to agree on a sense of direction. Usually this will result in director-level meetings at which an attempt is made to resolve differences that exist. If directors fail to resolve differences, a gubernatorial decision is required to set direction.

In the case of those agencies or departments administered by another elected official, e.g., the Attorney General's Office, or indirectly affected by the authority of the Governor, e.g., Ohio State University, coordination depends for the most part on nothing more than the willingness of those involved to work together for the common interest of the State. Departmental or

institutional loyalties tend often to be as strong or stronger than so-called "loyalties to cause."

As the State of Ohio prepares to establish a Lake Erie Shore Zone Management Program, it is clear that there is not a unified state policy either mandated by the Legislature or set down by the Governor regarding overall direction for the shore zone.

The lack of a unified policy permits departments and agencies to work in different directions and sometimes to actually compete with each other. This lack of unified administrative policy regarding shore zone activities is magnified in the lower-level inner workings of State Departments and results in situations where one department tends to block the activity of another in the belief that a proposed action by the second department is destructive to the goals of the first department. The administrative energies expended in these kinds of interdepartmental contests dilute the effectiveness of administration and create divisiveness. As this divisiveness grows, such skirmishes occur more frequently. A resolution of this problem seems essential to any effective Shore Zone Management Program.

### 3. Methods of Policy Making

Because policies effecting the shore zone are made by

a number of departments and agencies with different structures, they are made in a number of different fashions. Policies made by the Division of Wildlife in the Ohio Department of Natural Resources generally are embodied in division regulations which are established under the conditions set forth in the Administrative Procedures Act. Policy-making activities generally involve public hearings in a number of communities within the shore zone and permit a great deal of public participation. Such a regulation-setting process is also followed by a number of other agencies such as Ohio EPA and Ohio Department of Transportation.

In other cases, no such requirements for hearings exist, but an attempt is made to elicit public reaction to ideas through public hearings and meetings, e. g., Department of Economic and Community Development. In some cases, virtually no public input is sought in decision making, e. g., The Ohio State University. The degree of public participation in the decision-making process must be considered as part of the overall question of Lake Erie Shore Zone Management, especially in light of the regulatory requirements of the Coastal Zone Management Act.

It is also clear that there are situations in every department where policy decisions that affect the shore zone are made solely in an internal fashion with little consultation with anyone outside of the department or agency. Such internal decision-making clearly is necessary to the effective functioning of



government. But the decisions made in such situations should reflect general state policy adopted after free and open discussion of the state's goals for the shore zone.

In summary, the study shows that there is no overall administration of policy relating to the Lake Erie Shore Zone of Ohio. Rather a variety of state agencies, boards and commissions are administering statutory authority that impact on the shore zone and doing so primarily from the perspective of that department's or agency's goals, rather than the goals of the State of Ohio. \*

The State appears to lack, in addition to an overall shore zone policy, any administrative mechanism to assure interdepartmental communication and discussion of an ongoing manner. The planning activities conducted under the Coastal Zone Management Act to date appear to be the exception to this general rule. Because of the requirements of the Coastal Zone Management Act, the State has begun to address itself to the entire question of shore zone management in a comprehensive fashion for the first time. The federal requirements for the Coastal Zone Management Program seem to mandate that a formalized management structure needs to evolve from the planning phase and such a structure is discussed later in this study. However, we cannot stress too strongly the need for a

comprehensive, but less formal means which will insure increasing communications on shore zone matters between all departments and agencies involved.

#### B. POWERS OVER WATER AND SUBAQUACIOUS SOIL

The State of Ohio derives its rights and powers over the waters of Lake Erie and submerged lands under said waters, pursuant to both State and Federal statutory enactments.

Section 123.03 states:

That the waters of Lake Erie consisting of the territory within the boundaries of the state, extending from the Southerly shore of Lake Erie to the international boundary line between the United States and Canada, together with the soil beneath and their contents, do now and have always, since the organization of the state, belong to the state as proprietor in trust for the people of the state, for the public uses to which it may be adapted, subject to the powers of the United States Government to the public rights of navigation, water commerce and fishery and further subject to the property rights of littoral owners, including the right to make reasonable use of the waters in front of or flowing past the lands.

The Ohio Supreme Court held:

Under the constitutional grant of authority to regulate interstate and foreign commerce, the United States Government has paramount control of navigable waters, and power to establish therein, harbor lines and regulations. The title and rights of littoral and riparian proprietors in the subaquacious soil of navigable waters, within the limits of the state, are governed by the laws, of the state, subject to the superior authority of the federal government. The title of the land under the

waters of Lake Erie within the limits of the State of Ohio is in the state as trustee for the benefit of the people, for the public uses to which it may be adapted. State v. Cleveland and Pittsburgh Railway Co., 94 Ohio St. 61, 113 NE 677.

The issue of ownership and control arose again and was reconsidered in State ex rel Squire v. City of Cleveland, 150 Ohio St. 303, 82 NE 2nd 709, (1948). Therein, the Supreme Court reaffirmed its earlier holding in State v. Cleveland and Pittsburgh Railway Company, supra and held that the State of Ohio holds title to subaquacious soil of Lake Erie which bordered the state, as trustee for the public for its use in navigation, water commerce or fishery, and may, by proper legislative action, carry out its specific duty, protecting the trust estate and regulating its use. The state may, as a result, by proper legislative action, carry out its specific duty of protecting the trust estate and regulating its use. By the legislative enactment of Section 123.031, the General Assembly has done so.

Section 123.031 provides,

Whenever the state. . . determines that territory in front of uplands can be developed and improved and the waters thereof used. . . without impairment of the public right of navigation, water, commerce and fisherly, a lease of all or any part of the states interest therein may be entered into with said owner, subject to the powers of the United States Government and without prejudice to the littoral rights of said upland owner, provided the legislative authority of the municipal corporation within which any part of the territory is located, if such municipal corporation is not within the jurisdiction of a Port Authority,. . . may privately develop and improve said land as long as said development is compatible with permissible

land use under the water front plan of the local authority.

In addition to this leasing for private development provision, the State has delegated to municipalities fronting on Lake Erie, certain powers as to use and control of waters and soil of the lake. Section 721.04 provides,

Any municipal corporation . . . a part of the shore of the waters of Lake Erie may in aid of navigation and water commerce, construct, maintain, use and operate piers, docks, wharves and connecting wharves, . . . on any land belonging to the municipal corporation held under title permitting such use and also over and on any submerged artificially filled land . . . title to which is in the state, within the territory covered or formerly covered by the waters of Lake Erie in front of littoral land within the limits of such municipal corporation whether such littoral land is privately owned or not.

The second basis for ownership of the lands under Lake Erie is found in the Submerged Lands Act of 1953 which provides, in part:

It is determined and declared to be in the public interest that title to and ownership of the lands beneath navigable waters within the boundaries of the respective states and the natural resources within such lands and waters and the right and power to manage and administer, lease, develop and use the said lands and natural resources all in accordance with applicable state law be, and they are, subject to the provisions hereof, recognized, confirmed, established and vested in and assigned to the respective states or the persons who were on June 5, 1950 entitled thereto under the law of the respective states. (43 USCA 1311)

The Illinois Supreme Court in Bowes v. City of Chicago, 3 Ill. 2d 175, 120 NE 2nd 15 (1954), determined:

The State of Illinois does own the land under the waters of large lakes within its boundaries as do other states of the union. The recent so called Tide Lands Act, "Submerged Lands Act," recognized and reaffirmed such title in the states. Thus large portions of Lake Michigan, east of the City of Chicago are within the boundaries of Illinois and are owned by the state.

Navigable rivers and streams are placed in a different category from Lake Erie. In Gavit v. Chambers, 3 Ohio, 496, the Court held:

That the owners of lands situated on the banks of fresh water navigable streams are owners of the beds of the rivers to the middle of the stream, as at common law.

This investiture of title, however, is modified by the notion, that,

Title and rights of littoral and riparian owners in the subaquacious soil of navigable waters within the limits of a state are governed by the laws of the state subject to the superior authority of the Federal Government. State v. Cleveland and Pittsburgh Railway Co., supra.

In the case of State ex rel Anderson v. Preston 2 O. App. 2nd 244, 207 NE 2nd 664, (1963) the Court of Appeals for Franklin County affirmed The rule of Gavit supra, holding that:

An abutting owner on a navigable stream holds title to the middle of the bed of the stream, adjacent to his property.

As a result, the following may be adduced: While the owner of lands along the banks of a navigable stream or river own land to the center line, their proprietorship and ownership rights are

governed by the law of the state, subject to the superior authority of the Federal Government.

In Rheinfrank v. State of Ohio (an unreported decision) the main contention of the State of Ohio was that a portion of the Maumee River, designated as the Maumee Estuary, was part of Lake Erie and hence subject to the control of the state. Rheinfrank, the owner of land adjacent to the Maumee River claimed title to the center of the Maumee River. The scientific and geological facts as elicited at trial, which were upheld on appeal, pointed out that given the definition of Lake Erie, (no longer the low water mark) the plaintiff, Rheinfrank was the rightful owner of the lands to the center of the Maumee River.

As to the non-navigable bodies of water, a similar rule applies. A non-navigable inland lake is the subject of private ownership, and where a non-navigable inland lake is privately owned, neither the public nor an owner of adjacent land whose title extends only to the margin thereof, has right to boat upon or take fish from its waters (55 O Jur 2nd, Page 223, Waters and Water Courses).

### C. POWERS OVER LAND

#### 1. Generally

As previously discussed, the state may legislate in areas

deemed to be matters of state-wide concern. In State ex rel v. City of Akron 173 Ohio State 189, 181 NE 2nd 26, (1962) the Supreme Court recognized:

Due to our changing society, many things which were once considered a matter of purely local concern and subject strictly to local regulation, if any, have now become a matter of state-wide concern creating the necessity for state-wide control.

As a result, the following may be concluded: Once a power is classified as a power of local self-government, it does not remain so forever. Instead, changing factors, and realities of modern, technical society will often require the removal of a certain authority from the pigeon hole of local self-government. Such was the case with airport zoning, discussed elsewhere and such appears to be the case with the exercise of authority under a Coastal Zone Management Program.

In addition to the doctrine of state-wide concern, the State possesses constitutional authority by virtue of Article II, Section 36 to legislate for the "conservation of the natural resources of the State."

In interpreting this Section the Court of Appeals of Stark County \* addressed itself to the question of "whether the State can regulate or exercise any degree of control over the use of private property to this end." State of Ohio v. Martin, 105 Ohio App. 469, 152 NE 2d 898 (1957) The Court answered this question in the affirmative.

Thus it is clear that the State may regulate land use for conservation purposes by virtue of the direct constitutional grant and in addition may exercise authority over land use when it becomes a matter of state-wide concern.

An analogy to the situation existing in the shore zone can be made in the justification for airport zoning regulation.

## 2. Airport Zoning

Under Chapter 4563, the General Assembly has authorized the legislative authority of specified local political subdivision to engage in zoning so as to eliminate an airport hazard, defined as:

Any structure or object of natural growth or use of land within an airport hazard area which obstructs the air space required for the flight of aircraft in the landing or taking off at any airport or is otherwise hazardous to such landing or taking off of aircraft.

Section 4563.01 provides the definition of Airport Hazard

Area as:

Any area of land adjacent to an airport which has been declared to an Airport Hazard Area by the Division of Aviation in connection with any airport approach plan recommended by such division.

In Hageman v. Board of Trustees of Wayne Township, 23 Ohio Misc. 93,259 NE 2nd 162, (1968), airport zoning authority was initially challenged. The area to be regulated was that portion of the territory in and about and surrounding Wright-Patterson Air Force Base.



The Court of Common Pleas, Montgomery County held that, The Wright-Patterson Air Force Base zoning regulations, as adopted, tended to:

Limit the lighting in the corridor (the approach and take off area), the density of the concentration of people within the corridor, by limiting development to two residences per acre, and limit the height of structures and objects of natural growth therein.

The Court determined that the regulations imposed a taking of property for which just compensation must be paid. The Court said:

Zoning is an exercise of police power for the benefit of an entire community. Each tract must accept its share of reasonable restrictions as they relate to the mutual benefit of all. However, in this case all the regulations are solely for the benefit of WPAFB which is the only land not controlled by the proposed zoning regulations . . . In the instant case, the only beneficiary and object of the zoning attempt by the local regional board pursuant to state statute is the United States of America. The attempt by state and local authorities goes too far. It must be recognized for what it is: A taking for public use for which compensation must be made under the Constitution.

The decision of the Common Pleas Court was upheld by the Court of Appeals, in Hageman v. Board of Trustees of Wayne Township, 20 Ohio App. 2nd 12, 251 NE 2nd 507 (1969). While the Court recognized that the regulations were designed to assure the safety of the people and property now in the hazard zone and people and property who would be in such zone if the area were permitted to be developed, the Court determined that there was no threat to the safety of the people and property in such area, now or in the future, inherent in the development of the area in question under the township zoning plan. Instead the Court identified the source of the

threat to their safety as being in the "present and future uses of Wright-Patterson Air Force Base, "uses for the benefit of a governmental agency. The Court concluded therefore, that a taking of private property for public use had occurred.

The airport zoning statute weathered its first constitutional attack in Village of Willoughby Hills v. Corrigan 29 Ohio St. 2d 39 278 NE 2d 658, (1972). The Supreme Court addressed itself to the same question as had been presented in Hageman, supra, namely whether or not the regulations imposed were a reasonable exercise of the police power or instead were unreasonable, hence an unconstitutional taking. It was determined by the Court, that a taking had not occurred and that the airport zoning regulations, adopted in accordance with the provisions of Chapter 4563, designed to reduce airport hazards, were a constitutionally permissible exercise of the police power of the state, as long as such regulations were necessary to insure the safety of aircraft in landing and taking off and the safety of persons occupying or using the area and the security of property thereof. At the same time the Court recognized that if the enforcement of any zoning regulation, as to specific property, results in an unconstitutional taking, the Court could either enjoin the operation of the airport zoning regulation or direct the institution of eminent domain proceedings.

" As the evidence did not show an impairment of use or diminution in value," the Court held that a taking had not, in fact, occurred.

The second, and more important question, for the purposes of the discussion of a potential Shore Zone Management Program was:

Whether, to the extent that they (the airport zoning laws) authorize the adoption and enforcement of airport zoning regulations within the territory of a municipality are constitutional or unconstitutional as in conflict with the home rule powers of the municipal corporation under Article 18, Section 3 of the Constitution.

Herein lies the distinction between airport zoning and zoning in general. As earlier discussed, and because zoning is classified as a power of local self-government (i.e. the zoning of a particular area does not ordinarily have extra territorial effect), the General Assembly may not tell the municipality what it can zone, but it may only designate the procedures to be used in the enactment of zoning regulations. In the field of airport zoning, the General Assembly not only has set forth the procedure which must be followed by municipal corporations for the enactment of zoning legislation (Section 4563.06; provides for a public hearing following at least 30 days notice of said hearing) but also has enacted certain standards and criteria to be used as guidelines for the adoption of zoning regulations. The criteria are designated in Section 4563.07 which provides in pertinent part:

In determining what regulations are necessary, each political subdivision or Airport Zoning Board shall

consider, among other things, the character of the flying operations expected to be conducted at the airport, the per cent of slope or grade customarily used in descent or ascent of the aircraft expected to use the airport with reference to their size, speed and type, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put or is adaptable.

Section 4563.03 sets forth the "reasonableness standard" for the regulation and restriction of height to which structures may be erected or objects of natural growth may be allowed to grow.

An obstruction of air space in an Airport Hazard Area rising to a height not in excess of 40 feet above the established elevation of the airport or 3 feet for each 100 feet or fraction thereof, its location is distant from the nearest point in the perimeter of the airport, whichever is greater, shall be *prima facie* reasonable.

The Supreme Court, thus, was forced to deal with the contention that the General Assembly, by imposing substantive zoning limitations on municipalities (i. e. not merely prescribing procedures for the enactment of zoning ordinances) and adopting affirmative guidelines for the exercise of the zoning power was infringing on the municipality's constitutionally granted "powers of local self-government." The Court succinctly stated the proposition:

The municipal corporation asserts that the trial judge erred in failed to hold that the home rule power under Section 3, Article 18 of the Ohio Constitution, to zone gives it the exclusive right to zone within its territory; that therefore 4563.03 (which sets forth the reasonable standard) is unconstitutional to the extent that it purports to confer zoning authority on others.

The Court resolved this problem by relying on the doctrine of state-wide

concern, as earlier expounded:

The Constitution does not preclude state action on matters of state concern, and we agree with the holding of the trial court that the safety and welfare of persons above and on the ground in the vicinity of modern day airports is a matter of state concern.

Evidently, the Court recognized that once the matter has become of such general interest that it is necessary to make it subject to state-wide control so as to require uniform state-wide regulation, the municipality can no longer legislate in the field so as to conflict with the state.

#### D. REVIEW OF EXISTING STATE LEGISLATION AS IT RELATES TO THE SHORE ZONE

Any discussion involving existing state legislation, must necessarily begin with the competing and conflicting interests which are apparent merely on the face of the legislative pronouncement. A quick review of the matrix entitled Manner of Impact (Appendix F) demonstrates the degree and severity of conflict between not only different levels of government, but also between different departments and agencies within the state government, and between different divisions within the same department of the state government.

The Coastal Zone Management Act requires special consideration

for vital areas. The matrix clearly demonstrates that virtually every entity has some measure of control, either direct or indirect over vital and or unique areas. One need only look at the measure of control that certain entities have over estuaries, which may be vital and or unique areas. Port Authorities have direct control over areas designated as estuaries, even though their main purpose and function is to develop and to promote shipping and other means of trade using port facilities. At the same time, various divisions within the Department of Natural Resources have direct control over areas designated as estuaries, but their authority and power, as well as their interests are oriented toward the preservation and maintenance of such areas in their natural state.

As a result, there must be a necessary trade-off between developmental and ecological and natural considerations. The statutes do not reflect how this conflict is to be resolved and, indeed, only an analysis conducted on an instance by instance basis would so indicate. Because unique areas are also often vital areas, their use frequently results in competition among interests, conflicts and trade-offs.

In the case of key resources on the matrix, there appears to be a less dispersion of control among state agencies, local government, and interstate and regional commissions. This is especially true in state control of mineral resources. An example is the broad and all

incompassing powers granted to the Division of Oil and Gas over the drilling of wells. Indeed, the authority given to that division allows it to pre-empt the field of oil and gas regulation. Similar control has been given to other entities to regulate key resources.

It appears that this intensified regulatory authority is due to the high degree of state-wide concern in the preservation and use of key resources.

Many governmental entities have some measure of control over hazard areas i.e. flood plains and erodable areas. Municipalities may control land within their boundaries as may counties, and townships. State agencies also are involved in these areas. In this case, as in the case of most situations involving land use, authority for regulation is fragmented.

Key Activity Areas denote those areas essential to the orderly development of the state and environmental considerations. Few entities have any measure of control, over energy production apparently, and this may be reflected in the desire, as it was because it is a matter of great state-wide concern. In such cases a central and cohesive authority for administration purposes exists.

In the area of key activity many entities have substantial involvement. This appears to stem from the fact that many key activities are interrelated, have substantial economic impact and effect extensive amount of resources, especially land.

As an activity has a greater economic impact, the more centralized will be its authority and administration e.g. Public Utilities.

It is our opinion that a Coastal Zone Management Program would, to a great extent, require a reorganization and a change in the powers and authorities granted to the entities presently having some measure of control over vital, unique, key resource hazard and key activity areas. With the adoption of a Coastal Zone Management Program, these entities would exercise their authority in compliance with the plan as adopted for the Lake Erie Shore Zone.

It is clear from this review of existing state legislation that the legislature in recent years has addressed itself to the complexity and interrelationship of the state's problems. This has resulted in the enactment of statutes dealing in a broad and comprehensive fashion with areas of general concern and has produced new state agencies with far ranging authority e.g. Department of Transportation and E. P. A. and has required existing agencies to broaden their approach e.g. Division of Reclamation. This legislative trend appears to favor the comprehensive approach required of Ohio by the Coastal Zone Management Act.



CONCLUSIONS AND RECOMMENDATIONS

FOR THE ENACTMENT OF

THE OHIO LAKE ERIE SHORE ZONE MANAGEMENT ACT

## CONCLUSIONS AND RECOMMENDATIONS

### A. OVERVIEW OF COASTAL ZONE MANAGEMENT

Any plan for the management of the Ohio Lake Erie Shore Zone must recognize the dual relationship that exists regarding activities in the shore zone.

There are two distinct relationships which determine the kind and quality of management which can realistically be achieved; vertical relationships and horizontal relationships.

#### 1. Vertical Relationships

Virtually any major decision relating to the development or restoration of the Lake Erie Shore Zone is subject to either passive or active review by governmental agencies in ascending order. Local governments are called upon to deal with such matters in a number of ways, but most commonly in such regulatory areas as zoning and building permits and in providing utilities, streets and basic services. Local governments and local districts also have a direct interest relating to the positive and negative affects on their base of taxation, and the general effect on the quality of community services they provide.

County governments have essentially the same concerns as local governments, but are viewed in a larger geographic context. In highly urbanized counties, their role in land use planning and other such regulatory areas is very small. In counties that are only nominally urbanized, the county's role is more significant.

Regional concern with Lake Erie Shore Zone activities can involve local and county governments, which are not directly affected, through an assortment of regional agencies that are either concerned with regional operations (e.g., public transit) or with regional planning (e.g., NOACA). Another matter of regional concern is the limited amount of state and federal resources which are available to a region. The allocation of these resources within the region necessarily has an effect on all entities within it.

The State of Ohio has a direct concern with shore zone activities because of its mandate to preserve and protect Lake Erie and its shore zone as an irreplaceable resource belonging to all the people of Ohio. Further, it has a responsibility to promote those activities which are beneficial to all citizens of the zone and the State. Lake Erie is an economic resource as well as a natural resource and fosters key industrial and commercial activities that are integral to the fiscal well-being of Ohio.

Also, under a variety of federal laws, the State is required to assume a partnership role with the federal government in assuring that certain federal requirements are met regarding activities in the shore zone; e.g., air and water pollution.

Finally, federal government, especially in post World War II years, has asserted its role over a number of activities fundamental to the Lake Erie Shore Zone. Increasing federal intervention has been inspired by the realization that activities by Ohioans can have a direct effect on citizens of neighboring states and the nation of Canada.

Thus, any intelligent management approach to the Lake Erie Shore Zone must clearly recognize that an extremely complex series of intergovernmental relations are set in motion by significant shore zone activities. The Lake Erie Shore Zone has perhaps the most complex series of intergovernmental relationships in Ohio.

It is our belief that any effective management program for the shore zone will require either a tremendously increased sharing of powers among various layers of government or the assumption of primary responsibility and authority for shore zone activities by a single governmental level.

It is also clear that because of the vast array of governmental entities concerned with shore zone decisions, a system combining management by exception and management by objective will be required in dealing with shore zone activities.

For the purposes of this study, management by exception is defined as a system in which the State of Ohio, as the primary manager of the shore zone, establishes broad objectives and lays down criteria which, if followed, will result in general objectives being achieved. Under this system, units of government below the state level would be free to perform their functions with a minimum of supervision by the State. The State would exert an active management role only in those situations where local and regional agencies deviate substantially from the standards established by the State. State intervention thus would be the exception rather than the rule.

Management by objective is defined as a system with more intensive State involvement intended to be used in those situations where any shore zone activity can have a major effect on unique and vital areas. In the use of management by objective, the State itself would provide day-to-day management consistent with a State established plan intended to insure that specific goals and objectives are realized within a fairly specific time frame.

## 2. Horizontal Relationships

While vertical coordination of governmental levels in the shore zone presents a serious challenge, the horizontal relationship between shore zone activities is perhaps even more difficult to coordinate.

Within each layer of government exist agencies with basic functional responsibilities which often results in competitive philosophies between agencies at the same governmental level. An obvious example is the philosophy of those concerned with transportation, regardless of level of government, versus the philosophy of those concerned with preservation of open space, regardless of level of government. Another example is economic development interests versus environmental protection interests.

These differences stem generally, although not always, from the simple fact that bordering the 265 miles of mainland coast line is an exhaustable supply of land, and competition for the use of this resource is growing keener by the day.

These horizontal or functional relationships are sometimes further complicated by differences between agencies in the same functional areas at different levels. Thus, agencies with the same general goals do not necessarily share a uniform approach to meeting these goals.

It is imperative that a uniform approach to activities in the coastal zone be developed--based on law--and that such an approach be evolved with maximum opportunity for input from all functional areas at all levels.

With a uniform approach supported by a consensus of the user groups--whether it be called a master plan or a general policy statement or general criteria--it should be possible to implement a management

program for the shore zone that can be administered in a timely, efficient, and coherent manner.

In analyzing the horizontal relationships that must be dealt with in any management program, we must again conclude that only a system combining management by exception and management by objective is workable.

## B. OVERVIEW OF GOVERNMENTAL AUTHORITY

### 1. State of Ohio

A review of existing state legislation in Ohio finds that the state government has broad authority to control many activities impacting on the shore zone of Lake Erie.

First, the State has absolute direct authority over the Lake and is owner of the lake bed below its waters.

The only major dispute in this area revolves around the location of the shoreline. The question exists of whether the shoreline is established by low water datum or high water datum and whether it includes an estuary or marsh.

The most recent legal activity relating to the location of the shoreline--Rheinfrank v. State of Ohio--indicates that the State is not the owner of land below the surface of the water in an estuary, but rather that the land is owned by the adjacent property owners. The State does, however, have some control over waters in such situations.

A further review of existing state authority shows that the state also possesses broad authority to control many key resources and key activities within the Shore Zone Planning Region. Among these are such activities as energy production, transportation, water and air pollution and resources such as wildlife and minerals.

Where the State appears to have little or no authority is in the control of specific land uses within the shore zone, other than through the use of eminent domain or in cases where lands are already owned by the state.

Land use controls are now exercised primarily by municipal corporations, townships and other local entities without regard to state statutes other than those statutes delegating such power. The only exception to this pattern occurs in matters which are of state-wide concern.

Any extension of the State's authority on matters of land use in the shore zone will require a precise definition of the shore zone and a set of standards or criteria relating to permissible uses and activities in the zone. This is clearly the single most glaring gap in the state's present authority and the one which is most difficult to remedy legally.

## 2. Local Government

While in the abstract the State of Ohio has broad power and authority when compared to that of local government, as a practical matter, local government has much greater influence over activities within the Shore Zone.



This is especially true in matters of land use. Traditionally the power to zone and control land use within the borders of each community was granted exclusively to the governmental subdivision having jurisdiction over that territory.

The degree of influence which the State and the Legislature have over the local governmental unit depends upon where that unit acquired its power and where it stands in horizontal relationship to the State of Ohio.

The county is the largest governmental unit but for the purposes of zoning and land use regulation its powers are limited. Because it is a wholly subordinate political subdivision of the State, the county possesses only that authority which has been specifically delegated to it. The Legislature has imposed a number of substantive zoning restraints on counties (e.g., limiting the authority to zone only in unincorporated territory within the county, and has mandated that certain uses within the unincorporated territory may not be classified out of existence).

The most powerful unit of local government is the municipal corporation. Municipal corporations, under Article 18 Section 3 of the Constitution of Ohio, may exercise all powers of local self-government. Since zoning is classified as a power of local self-government, municipalities may substantively zone i.e. classify certain territory by con-

sidering local health, safety and welfare factors. These decisions may be generally made without regard for any legislative enactments or provisions, unless a matter has been declared to be of state-wide concern.

The existence or non-existence of a charter in a particular municipality affects only the procedure for enacting substantive zoning regulation. If a municipality has a charter which sets forth zoning procedures, the municipality may follow those procedures and disregard the state statutory procedures. If a municipal corporation has a charter which does not contain a procedure for zoning or is exercising its powers in the absence of a charter, state legislation setting forth the procedures to be used in zoning certain parcels of property, must be followed.

The third governmental unit within Ohio is the township. A township is a creature of statute and derives all its powers from the Legislature, rather than from any constitutional grant. As a result, the township may only exercise the zoning authority specifically given it by the Legislature. The Legislature, if it chose, could take all zoning authority away from the township and provide directly for zoning from a state board, commission or agency. While this is not politically feasible the Legislature could terminate township zoning authority.

Under the Lake Erie Shore Zone Management Program, the State must be able to exercise some measure of control over local zoning classifications and decisions. This presents little problem as to counties and

townships since the General Assembly has vested them with power subject to certain limitations, and it can just as easily divest them of that power, or place certain substantive limitations upon the exercise of their power. Municipal corporations present a different problem. Since their zoning authority is based upon constitutional enactment, the General Assembly may not ordinarily impose restraints on the exercise of that authority. For this reason, the study considered the viability and propriety of a constitutional amendment either limiting the zoning powers of a municipal corporation or creating an exception to their exercise. The time table for enactment of a Shore Zone Management Program requires that implementation take place in less than two years. The constitutional amendment alternative was eliminated because of the difficulty of securing passage of such an amendment within this two year time span and the probability of extreme opposition to such a scheme.

The only remaining alternative, which the study considered was a legislative enactment based upon evidence of biological, economic, geological, environmental, and ecological need; its goal being to preserve and develop the natural resource, Lake Erie, and its shore zone for the benefit and use of all of the people of the State of Ohio. While any state enactment setting forth substantive restrictions on local zoning power would seemingly fly in the face of the powers of local self-government, this study has determined that a properly drafted statute, supported by scientific

and other evidence justifying imposition of restrictions on municipal zoning authority would be consistent with the doctrine of statewide concern. Thus, the Ohio Legislature, under the doctrine of statewide concern may enact laws to effectuate a unified and consistent policy to best protect the interest of the people of the State. Thus, if the evidence shows that the preservation, maintenance or development of land within the shore zoning is essential to the State's recreational, environmental, or economic interests and needs, it is a matter of state concern and any subsequent state enactment will be valid. Under these circumstances state legislation will prevail over local enactments.

### C. GENERAL FINDINGS AND RECOMMENDATIONS

In examining the current legal and administrative arrangements which impact on the Lake Erie Shore Zone, this study attempted to pinpoint major inadequacies in the current management system and to suggest a new management system to correct them. Further, the study attempted to analyze the attitudes of citizens and public officials toward shore zone management in the belief that no meaningful management system can be created or implemented without support from a consensus of those affected by it.

#### I. MAJOR EXISTING INADEQUACIES

##### a. Lack of Definition

No level of government has clearly defined the physical boundaries of the Lake Erie Shore Zone. The zone, therefore, is in the eyes of the beholder. Since there is no agreed-upon definition of the zone, management

is an impossibility. The major question is simply, "Where is the Shore Zone?"

b. Fragmentation of Authority

Authority over various activities in the shore zone is scattered among all layers of government. Currently no level has been assigned primary responsibility for controlling shore zone activities in a coherent fashion. Before any effective management program can be undertaken, the question must be answered, "Who will manage?"

c. Lack of Goals and Objectives

Even with a precise shore zone definition and a clear legislative mandate assigning responsibility, intelligent management of the shore zone cannot take place until goals and objectives for the management program have been formulated. Because the zone is an exhaustible resource capable of meeting a variety of needs, it will always inspire competition among diverse user groups; commercial, industrial, recreational, environmental, etc. Goals and objectives recognizing those diverse interests--and supported by Ohioans generally and shore zone residents specifically--are essential to any management plan. Thus we must attempt to answer the question, "Why manage the Shore Zone?"

#### d. Lack of a Uniform Land Use Plan

Agreement on general goals and objectives is not sufficient to deal with the hard, day-to-day decisions which have to be made regarding land uses. Not only are there no uniform goals and objectives underpinning all land use plans in the shore zone, in some areas there are no land use plans at all. Even where plans exist, a lack of professional planning expertise makes their implementation uneven. Without such plans setting forth generally agreed upon goals, land use decisions will continue to be made both in the public and private sectors based on narrow geographic and economic considerations. Without agreement on what land uses are both permissible and desirable, no management program can be effective. Thus, there is a need to resolve, "What is to be managed?"

## 2. ATTITUDES

An effective Lake Erie Shore Zone management program will require an understanding and appreciation of the attitudes held by public officials and citizens toward the shore zone. Among the most important of these are:

#### a. Lack of Perspective

All of the inadequacies cited above can be said to stem from a lack of understanding of the unique and intrinsic value of Lake Erie to the State of Ohio. Many Ohioans and especially those residing in the Shore

Zone have not been appreciative of these values. Exploitation and misuse of Lake Erie and its adjacent land has only in recent years become a matter of broad public concern and only then after doom-laden forecasts of the Lake's future. The study found that many citizens and officials who live in the shore zone and have authority over it have little concern for the shore zone or the resource it represents. They seem to take Lake Erie for granted and fail to recognize the opportunities which intelligent shore zone use can provide. Educating the people of Ohio of the importance of the shore zone and Lake Erie is a matter of highest priority.

b. Recognition of State Role

It is recognized by those currently involved in shore zone management at the local level that the State of Ohio should assume a leadership role in shore zone management activities. At the same time, local officials clearly do not want to give up their voice in matters which directly effect land use within their governmental boundaries.

c. Impact Recognition

The study found that many agencies do not recognize the significance of the impact they have on the shore zone. There is a clear need for key government officials to more fully understand the impact of their day-to-day decisions on the kind and nature of shore zone activities.

#### d. Citizen Involvement

A clear and important distinction exists between those persons who live or own property in the shore zone and those who live outside the shore zone, but take a recreational or environmental interest in it. It is clearly easier for those citizens with no direct vested interest in the shore zone to favor severe land use regulations. These differences are similar in many ways to those attitudes expressed in recent years in the debate over strip mining control in Ohio, with citizens in the coal-bearing regions less inclined to favor controls than residents elsewhere.

#### D. SPECIFIC RECOMMENDATIONS

The following are specific recommendations for the implementation of the Lake Erie Shore Zone Management Program. These recommendations were formulated taking into account the requirements of the Coastal Zone Management Act and weighing alternatives from the standpoint of legality, political feasibility, efficiency, and potential costs.

##### 1. DEFINITION OF THE COASTAL ZONE

The establishment of precise boundaries for the Lake Erie Shore Zone is critical. From the legal standpoint, the zone may extend only so far as is reasonable and necessary to control those uses having a direct and significant impact on coastal waters, and therefore may be deemed matters of state-wide concern. The depth of the zone need not be uniform from border to border as long as direct and significant impact



can be demonstrated.

The zone should be able to include fully, unique and vital areas which may in some cases extend further inland than in other areas, e.g., wet lands, estuaries and marsh lands.

Primary concerns in defining the shore zone were (a) making it large enough to insure that management activities would be meaningful (b) making it small enough to insure management would be possible and (c) making the definition as clear and reasonable and legally defensible as possible.

In studying the proper definition of the shore zone, a variety of alternatives were considered. They include:

- (1) defining the entire nine-county Shore Zone Planning Region as the shore zone, with each county being entirely included.

#### Analysis

Such a zone would appear to be too large and complex involving, for example, the non-shore zone-related governments in the urbanized counties, such as those in southern Cuyahoga County. Under Regulation 923.11 of the Act, "The area must not be so extensive that a fair application of the management program becomes difficult or capricious."

- (2) defining the shore zone as that area including water sheds for all streams flowing into Lake Erie in Ohio.

#### Analysis

Such a shore zone would be extremely large involving the State in management activities several counties removed from Lake Erie and would be legally indefensible. Such a

zone would encompass territory having no direct and significant impact on coastal waters. Thus, the scheme would resemble a patch work quilt; some areas within this zone would require state participation and other areas, because of the lack of direct and significant impact on coastal waters would require no state participation.

- (3) defining the shore zone as an area extending inland the depth of one township from the shore of Lake Erie.

#### Analysis

A shore zone so defined was seriously considered but eliminated because while such a boundary may be administratively convenient it would only be acceptable if it approximated a boundary developed according to what uses have a direct and significant impact upon coastal waters. This definition would not approximate the needs of the program, i.e. there might be areas having a direct and significant impact upon coastal waters lying outside of the one township boundary as contained in this definition.

- (4) defining the shore zone as a combination of an area encompassing the instantaneous peaks, estuaries and high water datum.

#### Analysis

This definition suffers from the standpoint of clarity. Furthermore, given the present confusion of the law as to the definition of the boundaries of Lake Erie, i.e. State of Ohio vs. Rheinfrank, such a definition might create a great amount of litigation.

- (5) defining the shore zone as an area ranging inland from the shoreline as far as 10 miles.

### Analysis

This definition of the shore zone appears to be too large and would require management over activities with little or no relationship to the shore zone.

A number of variations of the above were also considered. Any definition will require some degree of subjective judgment and will have some imperfections. The definitions of the shore zone requires, in our opinion, more extensive discussion. The recommendation which follows is intended to serve as a point of departure for that discussion.

We recommend the following definition for the Lake Erie Shore Zone Management Program:

The Lake Erie Shore Zone shall be an area which includes all of the waters of Lake Erie within the State of Ohio and which ranges inland from the high water datum of Lake Erie a distance of 1,000 yards, more or less. All resources and activities taking place in the aforementioned area should be subject to management by the State of Ohio insofar as they have a direct and significant impact upon coastal waters and include unique and vital areas of state-wide concern.

In addition the coastal zone heretofore defined, should be expanded to include unique and vital areas adjacent to it which are areas of state-wide concern.

The boundary definition as recommended is the best of the alternatives for the following reasons: The uniform one thousand yard boundary would be satisfactory for the sake of administrative convenience. In addition, almost any land use within the 1,000 yard zone would appear to have some direct and significant impact on coastal waters, and therefore, be a matter of state-wide concern. Furthermore, such a boundary is legally defensible in that the necessary connection between regulation and need for regulation could be drawn.

The entire area recommended for the shore zone would be subject to minimal management by the State of Ohio. Those areas added to the recommended zone and certain areas, within the zone so designated, should be subject to optimal management by the State of Ohio. Further explanation of minimal and optimal management is provided later. It is further suggested that the establishment of the inland boundary for the shore zone use, should employ wherever possible clearly understood and definable political boundaries or physical elements.

The study maintains that this definition is one which most satisfactorily combines the necessary factors of administrative convenience, legal defensibility and positive effect i.e. the zone would be large enough to insure that management activities would be meaningful yet small enough to permit effective management.

Finally, it was deemed desirable to place as little burden as possible upon the local governments within the shore zone. For this reason, a narrowly defined shore zone with deviations only where necessary, will require minimal state intervention into matters traditionally categorized as local in nature.

## 2. ESTABLISHMENT OF CRITERIA AND PERMISSIBLE USES WITHIN THE COASTAL ZONE

The Coastal Zone Management Act mandates that participating states be able to manage their coastal or shore zones with one or a combination of the following methods:

- (1) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.
- (2) Direct state land and water use planning and regulation.
- (3) State administrative review for consistency with the program, with power to approve or disapprove after public notice and hearings. The Act calls for the State to define permissible land and water uses which have a direct effect on coastal waters.

Coastal waters, the Act says, are those within the territorial jurisdiction of the United States consisting of the lake itself, its connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes.

This study reviewed a number of methods which might be used to determine permissible land and water uses in the Coastal Zone.

Among the alternatives considered were:

- (1) Authorizing local government agencies to establish uses without state involvement.

#### Analysis

This does not appear to comply with requirements of the Coastal Zone Management Act. Regulation 923.12 requires that the state develop and apply a procedure for defining permissible land and water uses within the coastal zone which have a direct and significant impact upon coastal waters. Generally local governments have insufficient facilities and lack the expertise to conduct the necessary inventory of natural resources and to analyze the environmental impact of reasonable resource utilizations.

- (2) Authorizing local government agencies to establish uses consistent with criteria set by the State.

#### Analysis

This appears to be a viable alternative and a variation of it is embodied in the recommendations which follow.

- (3) Authorizing regional planning agencies to establish uses following state criteria.

Analysis

This was eliminated because no level of government, including the agencies themselves, considers regional planning agencies to be the proper vehicle for implementing a Shore Zone Management Program. Because of the remoteness of regional planning agencies from the citizenry this alternative is now considered politically feasible.

- (4) Direct action by the State to establish uses without involvement of local government.

Analysis

This alternative was eliminated in recognition of the importance of local governmental support in an effective management program. Except in situations of local inaction or where unique and vital areas are involved, local governments deserve the opportunity to provide input.

- (5) Establishment of uses by a special commission composed of state, regional, and local officials and citizens.

Analysis

This appears to be a viable alternative and a variation of it is embodied in our recommendation.

It is our recommendation that a temporary commission be established to include representatives of state departments, the legislature, and local and regional entities.

The temporary commission, chaired by the director of the Ohio Department of Natural Resources, would be served by existing staff of the Ohio Department of Natural Resources and such other staff as may be required of other departments.

The temporary commission would be charged with responsibility for establishment of criteria to be followed in determining permissible land uses in the shore zone. We believe that it is essential to establish uniform criteria to be applied throughout the zone in order to achieve effective management. Further said criteria should be based upon the State interest in Lake Erie and its shore zone.

To this end, the temporary commission should prepare draft criteria which it feels might apply to land use in the shore zone.

Such draft criteria should then be circulated to official and interested citizens in the shore zone for their consideration and be published in newspapers of general circulation throughout the zone.

Prior to the adoption of final criteria, the temporary commission should conduct a series of public hearings (5 or more) in various areas of the shore zone to give citizens an opportunity to comment on the criteria. Written comments should also be encouraged.



Final adoption of the criteria should be done under provisions of the Administrative Procedures Act to give the criteria the full effect of lawful regulations.

As part of its function, the temporary commission should be responsible for an inventory and designation of areas of particular concern within and adjacent to the shore zone, as required by the Act.

This should include:

- (1) Areas of unique, fragile or vulnerable habitat.
- (2) Areas of high natural productivity or essential habitat for living resources.
- (3) Areas of substantial recreational value.
- (4) Areas where development and facilities are dependent upon utilization of, or access to, coastal waters.
- (5) Areas of unique ecologic or topographic significance to industrial or commercial development.
- (6) Areas of urban concentration.
- (7) Areas of significant hazards, if developed, from storms, slides, and floods.
- (8) Areas needed to protect or replenish coastal lands.

Adequate consideration must also be given to the national interest involved in the siting of facilities necessary to meet needs beyond those local in purview.

It is recommended that two categories be developed for application in these areas included in the shore zone.

1. Areas of Minimal Management

This should include all areas within the coastal zone. Such areas should be subject to the minimum regulation necessary to fulfill the objectives of the Coastal Zone Act.

Analysis

In these areas the recommendations which follow provide for direct local regulation consistent with State established criteria.

2. Areas of Optimal Management

This should include all areas within the coastal zone or adjacent to it where intensive regulation is desirable because of unique value.

Analysis

In these areas the recommendations which follow provide for direct State regulation.

3. AUTHORITY AND PROCEDURE REQUIRED

It is recommended that the Ohio General Assembly enact "The Lake Erie Shore Zone Management Act."

The proposed legislation would create the temporary commission referred to above and empower it to establish the required criteria and designations recommended in this study.

The legislation would also define the shore zone as herein recommended. Further, the legislation would authorize the designation of minimal management and optimal management areas as might be required in the future and provide a means to amend criteria as conditions require.

"The Lake Erie Shore Zone Management Act" should establish a permanent mechanism to enforce the criteria recommended by the temporary commission and procedures to be followed by state and local government to provide continuing management of activities with direct and significant impact on coastal waters.

#### Establishment of a Permanent Commission

The Act should provide for establishment of a permanent commission to oversee management of the shore zone.

In considering what mechanism could best provide management of the shore zone, a number of alternatives were considered. They included:

- (1) Establishment of a new multi-purpose agency concerned with land use in the shore zone.

#### Analysis

This would require substantial amendment to the existing Ohio Code and necessitate the creation of an entirely new governmental structure. For reasons of cost and feasibility, it was eliminated.

- (2) Designation of an existing state agency to assume total responsibility for the shore zone.

#### Analysis

Because many state agencies now have some shore zone responsibility, this recommendation would require stripping current authority from many departments and would diminish expertise available in specialized departments. For reasons of political feasibility and efficiency, this alternative was eliminated.

- (3) Creation of a semi-autonomous agency similar to the Ohio Turnpike Commission to manage the shore zone.

#### Analysis

This was eliminated for reasons of cost, efficiency and political feasibility on essentially the same grounds as previously stated for (1) and (2).

- (4) Delegation of authority to regional agencies presently in existence.

#### Analysis

Regional agencies are on record as not favoring assumption of responsibility for the management program. In addition, other levels of government do not see regional agencies as viable management agencies. Thus this alternative was eliminated.

- (5) Creation of a Coastal Zone Agency with regional components.

### Analysis

Its major weakness's are its potential cost and political infeasibility.

- (6) Creation of a review-board type agency with full-time board members.

### Analysis

This alternative merits consideration although it would require creation of a new governmental structure with attendant costs.

From an efficiency standpoint, this alternative suffers by eliminating the role of existing departments presently involved in shore zone activities.

- (7) Delegation of total authority to local governments.

### Analysis

This alternative does not comply with requirements of the Coastal Zone Management Act.

- (8) A mixture of direct local control and direct State control through existing agencies.

### Analysis

A variation of this alternative is recommended.

It is recommended that there be created a Lake Erie Shore Zone Management Commission composed as follows: The director of the Ohio Department of Natural Resources who shall serve as chairman, the director of the Department of Economic and Community Development and the director

of the Environmental Protection Agency, and four citizens who reside in communities included, at least in part in the shore zone, two of whom shall be appointed by the Governor, one of whom shall be appointed by the Majority Leader of the Ohio Senate, and one of whom shall be appointed by the Speaker of the Ohio House of Representatives. No more than four of the members of the commission shall be of the same political party.

Staff for the Lake Erie Shore Zone Management Commission should be provided by the Ohio Department of Natural Resources and such other agencies as may be required.

Offices of the Shore Zone Management Commission should be centrally located in an area as accessible as possible to the shore zone, and the commission should seek to make its meeting accessible to citizens with an interest in the shore zone.

#### Procedures for Shore Zone Management

It is the intent of these recommendations to suggest a system for Lake Erie Shore Zone Management which permits local government to retain the maximum degree of decision making.

However, it is important to note that surveys and interviews conducted in the course of this study show that both local and regional officials believe that the State of Ohio must take the lead role in Lake Erie Shore Zone Management. They acknowledge that the State appears to be the only level of government within Ohio which can look beyond local and regional

concerns.

It is recommended that the Lake Erie Shore Zone Management Act require the adoption of master plans to govern land uses within the designated shore zone.

The Act should provide that after state criteria have been adopted, local governments <sup>should</sup> be given up to one year to adopt master plans, or modify existing plans, consistent with the criteria and permissible uses established in the State regulations for those areas of the shore zone designated as areas of minimal management.

The Act should further authorize the Lake Erie Shore Zone Management Commission to adopt, within one year and subject to the provisions of the Administrative Procedures Act, master plans for those areas designated as areas of optimal management. Such plans clearly must also be consistent with the established criteria.

It is recommended that local master plans be submitted to the Lake Erie Shore Zone Management Commission for review. This will provide the Commission with specific information regarding future input on the shore zone.

The recommendation for the adoption of master plans by both local and state governments is made in the belief that master plans assist both public and private sectors in dealing with specific land use decisions. Criteria alone are subject to misinterpretation. Properly devised master plans and legally adopted maps make clear to both present and potential land owners the

limitations they may face regarding land use. Master plans also can greatly assist public agencies in programs of land acquisition and in the management of publicly-held land.

Three alternatives may be considered regarding state approval of local plans. The Act might:

- (1) Require direct approval by the Commission of each plan submitted.
- (2) Provide for automatic approval of each plan unless the Commission specifically disapproves it within a specific time period, perhaps 90 to 180 days.
- (3) Provide for automatic approval, unless the Commission goes into court to set aside the plan.

We are inclined to favor recommendation number two but believe the matter needs further discussion.

In approving or disapproving any plan, the Commission could only regulate those uses having a direct and significant impact on coastal waters.

If local government agencies fail to submit the required plan, the Shore Zone Management Commission should be authorized to use direct state land and water planning techniques and staff to establish a plan for the locality. The management of such a state-established plan would be left to local government, consistent with the overall management program.

In order to insure compliance with the approved plan, the Shore Zone Management Commission should be given the power to file suit in the



Common Pleas Court if the plan is violated.

Any change in an approved plan should be required to be resubmitted to the Commission for approval or disapproval in the same way as the original plan. The Act may provide that changes to permit certain uses--for instance, construction of a single family home--be specifically exempted from resubmission to the Commission.

Variances and non-conforming uses present particular problems that require a somewhat different approach.

If a land owner or other interested party appeals to a local zoning board of appeals for a variance involving a particular piece of property within the shore zone, and said variance is approved by the local board of zoning appeals, the Act should provide authority for the Commission to appeal that decision into the Court of Common Pleas as an interested party and provide for some automatic stay of issuance of a permit until running of appeal time.

This would require the zoning board of appeals of any given locality to notify the State Commission of any variance which it grants.

The legislation should further provide that if a zoning board of appeals disapproves the request for a variance, and a land owner appeals that decision to the Court of Common Pleas, the State Commission may intervene in Court as an interested party, if the Commission determines that the decision may have a direct and significant impact on coastal waters.

These procedures would make maximum use of well established and viable mechanisms without requiring creation of new procedures and authorities.

With regard to non-conforming uses, the new legislation will encounter the same difficulties as any new zoning plan and determination of what constitutes an already established non-conforming use will continue to be a problem to be dealt with on an individual basis.

The Commission should also regulate policy between different department or divisions of the state government who may have competing or conflicting interests within the shore zone.

The Commission will have to establish policy and permissible land uses for state owned lands--both those which the state already owns and in coordinating acquisition of new state lands. Particular emphasis must be placed on the orderly development of the submerged lands of Lake Erie in order to insure the fullest development consistent with other uses of the area, i.e. recreational, industrial, etc. The Commission must further be able to establish criteria and permissible uses for municipally-owned lands in those areas and activities which constitute an area of statewide concern.

In those areas properly designated as areas of optimal management, the Shore Zone Management Commission should be authorized to review and approve or disapprove all changes in land use, all building permits,

and all other activities having a direct effect on coastal waters. Such review should be undertaken on an individual project basis. No agency of local government should be permitted to issue permits without state approval.

It should be stressed that this recommendation is made with the view that the designation of optimal management areas would be a selective tool used only in unique situations. At the same time, without the possibility of such strict regulation, certain invaluable resources in the shore zone will be lost forever.

The preceding recommendations are made because they combine input from all levels of government and the people of Ohio. The special temporary commission with its diverse membership would analyze the scientific evidence for which it has expertise, draft criteria and submit it to local government. Local officials with special knowledge of their community would implement the criteria. Only their failure to participate in the program would require the State to directly intervene and develop the master plan for territory located within their communities.

#### 4. FINANCING COASTAL ZONE MANAGEMENT ACTIVITIES

These recommendations are intended to provide effective management of the Coastal Zone within reasonable fiscal parameters. The procedure recommended would require a minimum of costly new governmental structure and would maximize use of existing structures at both State and local levels.

However, it is obvious that an effective program of Coastal Zone Management will require additional expenditure of tax dollars by both the State of Ohio and local and regional agencies within the shore zone. This study did not attempt to provide a detailed analysis of costs likely to be incurred and such costs will depend upon the precise management program adopted.

It is clear that start-up costs will be significant, especially as they relate to the preparation of master plans in the shore zone by local and state governments. The activities of the Temporary Commission will also require funding.

Finally, the need to provide staff for the Coastal Zone Commission and/or State agencies serving the Commission, will require an appropriation of additional funds by the Ohio General Assembly. While some of the needs of the Commission can be met by existing State agency staffs, the Commission's work load will be such that no State department should be expected to assume it without an additional appropriation for that purpose. The study recommends that, in addition to funding shore zone activities of State agencies, that the Ohio General Assembly appropriate funds to provide for 100% planning grants to agencies charged with the responsibility for master planning in the shore zone.

The cost of processing of variance and other similar requests could be offset by fees charged for their processing. Such fees should be minimal.

The costs likely to be incurred in the conduct of an effective Coastal Zone Management Program will likely be returned many times over as a result of the more economical and intelligent use of the shore zone of Lake Erie and should eventually result in reducing the financial burden on the public sector currently incurred as a result of lack of planning. From the standpoint of cost effectiveness, a properly conducted Lake Erie Shore Zone Management Program should be a bargain for Ohio.

#### 5. RECOMMENDATIONS FOR FOSTERING POSITIVE SHORE ZONE ACTIVITY

During the course of this study, it became obvious that a wide range of legal and administrative tools are needed to deal with the complexities of the Lake Erie Shore Zone.

The management mechanism proposed earlier must be accompanied by a program which provides positive incentives to foster desirable shore zone activity.

It should be emphasized that shore zone management must not be solely a program of preservation of the status quo in the zone.

While negative development must be discouraged, positive development must be equally encouraged. This positive development might include activities as diverse as improved recreational facilities, marine-related research centers, and many others.

The study recommends that further study and consideration be given to positive approaches and especially to the following:

- (1) Increased allocations of Federal pass-through funds by the State to finance activities, especially land acquisition and capital improvements in the Lake Erie Shore Zone.
- (2) Increased allocations of State monies, especially capital improvements funds, to finance beneficial shore zone improvements.
- (3) A marching grant program with local governments to help finance local projects beneficial to the shore zone.
- (4) A program of state tax incentives to encourage desirable development in the shore zone and encourage the relocation of undesirable activities.
- (5) A State program to acquire, hold, and lease land in the shore zone to insure continuation of beneficial uses.
- (6) State-financed relocation for those individuals or firms currently having non-beneficial uses, and who are desirous of relocating.
- (7) Increased efforts to open to public access lands now held by Federal, State, and local government.
- (8) Increased supply of publicly-owned land through negotiated trades of outside the zone.
- (9) Rate incentives for utilities to undertake placement of lines underground.

- (10) Special focus by the Department of Economic and Community Development on development activities in the shore zone.
- (11) Establishment of a special seminar program involving both State and local administrators with mutual concern in shore zone management.

Appendix A.

Coastal Zone Management Act  
of 1972 and Regulations



## COASTAL ZONE MANAGEMENT ACT OF 1972

(PL 92-583; signed by the President October 27, 1972)

## An Act

To establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act entitled "An Act to provide for a comprehensive, long-range, and coordinated national program in marine science, to establish a National Council on Marine Resources and Engineering Development, and a Commission on Marine Science, Engineering and Resources, and for other purposes", approved June 17, 1966 (80 Stat. 203), as amended (33 U.S.C. 1101-1124), is further amended by adding at the end thereof the following new title:

## TITLE III—MANAGEMENT OF THE COASTAL ZONE

## SHORT TITLE

SEC. 301. This title may be cited as the "Coastal Zone Management Act of 1972".

## CONGRESSIONAL FINDINGS

SEC. 302. The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone;

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

## DECLARATION OF POLICY

SEC. 303. The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and par-

ticipate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

## DEFINITIONS

SEC. 304. For the purposes of this title—

(a) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(b) "Coastal waters" means (1) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (2) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(c) "Coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(d) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(e) "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(f) "Secretary" means the Secretary of Commerce.

(g) "Management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) "Water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 307(f).

(i) "Land use" means activities which are conducted in or on the shorelands within the coastal zone, subject to the requirements outlined in section 307(g).

## MANAGEMENT PROGRAM DEVELOPMENT GRANTS

SEC. 305. (a) The Secretary is authorized to make annual grants to any coastal state for the purpose of assisting in the development of a management program for the land and water resources of its coastal zone.

(b) Such management program shall include:

(1) an identification of the boundaries of the coastal zone subject to the management program;

(2) a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters;

(3) an inventory and designation of areas of particular concern within the coastal zone;

(4) an identification of the means by which the state proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decisions;

(5) broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority;

(6) a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

(c) The grants shall not exceed 66 $\frac{2}{3}$  per centum of the costs of the program in any one year and no state shall be eligible to receive more than three annual grants pursuant to this section. Federal funds received from other sources shall not be used to match such grants. In order to qualify for grants under this section, the state must reasonably demonstrate to the satisfaction of the Secretary that such grants will be used to develop a management program consistent with the requirements set forth in section 306 of this title. After making the initial grant to a coastal state, no subsequent grant shall be made under this section unless the Secretary finds that the state is satisfactorily developing such management program.

(d) Upon completion of the development of the state's management program, the state shall submit such program to the Secretary for review and approval pursuant to the provisions of section 306 of this title, or such other action as he deems necessary. On final approval of such program by the Secretary, the state's eligibility for further grants under this section shall terminate, and the state shall be eligible for grants under section 306 of this title.

(e) Grants under this section shall be allocated to the states based on rules and regulations promulgated by the Secretary: *Provided, however,* That no management program development grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

(f) Grants or portions thereof not obligated by a state during the fiscal year for which they were first authorized to be obligated by the state, or during the fiscal year immediately following, shall revert to the Secretary, and shall be added by him to the funds available for grants under this section.

(g) With the approval of the Secretary, the state may allocate to a local government, to an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to a regional agency, or to an interstate agency, a portion of the grant under this section, for the purpose of carrying out the provisions of this section.

(h) The authority to make grants under this section shall expire on June 30, 1977.

#### ADMINISTRATIVE GRANTS

SEC. 306. (a) The Secretary is authorized to make annual grants to any coastal state for not more than 66 $\frac{2}{3}$  per centum of the costs of administering the state's management program, if he approves such program in accordance with subsection (c) hereof. Federal funds received from other sources shall not be used to pay the state's share of costs.

(b) Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided, however,* That no annual administrative grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

(c) Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

(2) The state has:

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed

by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title.

(3) The state has held public hearings in the development of the management program.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

(5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(8) The management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

(9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

(d) Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(e) Prior to granting approval, the Secretary shall also find that the program provides:

(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(f) With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: *Provided,* That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

(g) The state shall be authorized to amend the management program. The modification shall be in accordance with the procedures required under subsection (c) of this section. Any amendment or modification of the program must be approved by the Secretary before additional administrative grants are made to the state under the program as amended.

(h) At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided,* That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

## INTERAGENCY COORDINATION AND COOPERATION

Sec. 307. (a) In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered. In case of serious disagreement between any Federal agency and the state in the development of the program the Secretary, in cooperation with the Executive Office of the President, shall seek to mediate the differences.

(c) (1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

(3) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of a certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

(d) State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security.

(e) Nothing in this title shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which

may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

## PUBLIC HEARINGS

Sec. 308. All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

## REVIEW OF PERFORMANCE

Sec. 309. (a) The Secretary shall conduct a continuing review of the management programs of the coastal states and of the performance of each state.

(b) The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

## RECORDS

Sec. 310. (a) Each recipient of a grant under this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this title.

## ADVISORY COMMITTEE

Sec. 311. (a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including travel time, may receive compensation at rates not exceeding \$100 per diem; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently.

## ESTUARINE SANCTUARIES

Sec. 312. The Secretary, in accordance with rules and regulations promulgated by him, is authorized to make available to a coastal state grants of up to 50 per centum of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of the natural and human processes occurring within the estuaries of the coastal zone. The Federal share of the cost for each such sanctuary shall not exceed \$2,000,000. No Federal funds received pursuant to section 305 or section 306 shall be used for the purpose of this section.

## ANNUAL REPORT

Sec. 313. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than November 1 of each year a report on the administration of this title for the preceding fiscal year. The report shall include but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a

breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved or with respect to which grants have been terminated under this title, and a statement of the reasons for such action; (5) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 307, are not consistent with an applicable approved state management program; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (8) a summary of outstanding problems arising in the administration of this title in order of priority; and (9) such other information as may be appropriate.

(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

#### RULES AND REGULATIONS

SEC. 314. The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for full participation by relevant Federal agencies, state

agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 315. (a) There are authorized to be appropriated—

(1) the sum of \$9,000,000 for the fiscal year ending June 30, 1973, and for each of the fiscal years 1974 through 1977 for grants under section 305, to remain available until expended;

(2) such sums, not to exceed \$30,000,000, for the fiscal year ending June 30, 1974, and for each of the fiscal years 1975 through 1977, as may be necessary, for grants under section 306 to remain available until expended; and

(3) such sums, not to exceed \$6,000,000 for the fiscal year ending June 30, 1974, as may be necessary, for grants under section 312, to remain available until expended.

(b) There are also authorized to be appropriated such sums, not to exceed \$3,000,000, for fiscal year 1973 and for each of the four succeeding fiscal years, as may be necessary for administrative expenses incident to the administration of this title.

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PART I



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## DEPARTMENT OF COMMERCE

National Oceanic and  
Atmospheric Administration



### COASTAL ZONE MANAGEMENT PROGRAM ADMINISTRATIVE GRANTS

NOTICE OF FINAL RULEMAKING

**Register**



The regulations below set forth (a) criteria and procedures to be utilized in reviewing and approving coastal zone management programs pursuant to section 306 of the Act, and (b) procedures by which coastal States may apply to receive administrative grants under section 306(a) of the Act. The criteria and procedures under (a) constitute the "guidelines for section 306" referred to in 15 CFR 920.

The National Oceanic and Atmospheric Administration is publishing herewith the final regulations describing procedures for applications to receive administrative grants under section 306 of the Act. The final regulations and criteria published herewith were revised from the proposed guidelines based on the comments received. A total of thirty-two (32) States, agencies, organizations and individuals submitted responses to the proposed section 306 guidelines published in the FEDERAL REGISTER on August 21, 1974. Of those responses received, nine (9) were wholly favorable as to the nature and content of the guidelines as they appeared in the FEDERAL REGISTER on August 21, 1974. Twenty-three (23) commentators submitted suggestions concerning the proposed Section 306 guidelines.

The following analysis summarizes key comments received on various sections of the draft regulations and presents a rationale for the changes made:

1. Several commentators asserted that the guidelines did not adequately reflect the environmental considerations contained in the Act. No changes were made in response to these comments since the guidelines more than adequately reflect the environmental concerns in the legislation as evidenced in part by the comment section under § 923.4:

Management programs will be evaluated in the light of the Congressional findings and policies as contained in Section 302 and Section 303 of the Act. These sections make it clear that Congress, in enacting the legislation, was concerned about the environmental degradation, damage to natural and scenic areas, loss of living marine resources and wildlife, decreasing open space for public use and shoreline erosion being brought about by population growth and economic development. The Act thus has a strong environmental thrust, stressing the 'urgent need to protect and to give high priority to natural systems in the coastal zone.

2. Several comments were received on the necessity of the Secretary of Commerce preparing and circulating an environmental impact statement on each individual State application as required by § 923.5. The National Environmental Policy Act, 42 USC 4332, and implementing regulations, 38 FR 20562, August 1, 1973, require an environmental impact statement be prepared and circulated on each individual State's application. An environmental impact statement shall be prepared on each individual State's application by the Secretary, primarily on the basis of an environmental assessment, and other relevant data, prepared and submitted by the individual States. This section

was amended to reflect the requirement of the National Environmental Policy Act environmental impact statement requirements.

3. Several comments indicated that the States did not have a clear understanding as to what was meant under § 923.11 (b) (4) which refers to Federal lands subject solely to the discretion of, or which is held in trust by, the Federal government, its officers and agents. This section has been amended in order to provide a procedure for identifying those lands which are within the framework of this section.

4. Several commentators indicated that there was uncertainty as to what the requirements of the national interest were pursuant to § 923.15. This section has been amended in order to more succinctly state what the requirements are pursuant to this section and how a State must meet these requirements during the development and administration of its coastal zone management program. At the request of several commentators, several additions have been made to the list of requirements which are other than local in nature.

5. Several commentators indicated that § 923.26, which pertains to the degree of State control needed to implement a coastal zone management program, did not offer sufficient guidance in interpreting the legislation. In response to these comments, § 923.26 has been expanded to include specific examples of how a State may implement this section.

6. Comments received indicate there was some misunderstanding in interpreting § 923.43, which deals with geographical segmentation. This section has been substantially amended in order to indicate that the segmentation issue refers to geographical segmentation of a State's coastal zone management program. The requirements for a State to receive approval on a segmented basis are clearly set forth in the amendment to the regulations.

7. Extensive discussions have taken place with various elements of the U.S. Environmental Protection Agency (EPA) concerning the applicability of air and water pollution requirements to the development, approval and implementation of State management programs pursuant to § 923.44 of the proposed regulations. State coastal zone management programs have also been surveyed in order to determine current and anticipated problems, issues and opportunities associated with carrying out the requirements of section 307(f) of the Coastal Zone Management Act, and § 923.44 of the draft approval regulations. Consolidated EPA comments have been received, together with State reviews, and one comment from the private sector. Specific clarifications and changes as a result of these reviews are contained in §§ 923.4, 923.12, 923.32 and § 923.44 of these regulations.

8. One commentator objected to the amount of detail required in section 306 applications and the undue administrative burden proposed pursuant to Sub-

# Title 15—Commerce and Foreign Trade CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

## PART 923—COASTAL ZONE MANAGEMENT PROGRAM APPROVAL REGULATIONS

The National Oceanic and Atmospheric Administration (NOAA) on August 21, 1974, proposed guidelines (originally published as 15 CFR Part 923), pursuant to the Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280), hereinafter referred to as the "Act," for the purpose of defining the procedures by which States can qualify to receive administrative grants under the Act.

Written comments were to be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, before November 22, 1974, and consideration has been given these comments.

The Act recognizes that the coastal zone is rich in a variety of natural, commercial, recreational, industrial and esthetic resources of immediate and potential value to the present and future well-being of the nation. Present State and institutional arrangements for planning and regulating land and water uses in the coastal zone are often inadequate to deal with the competing demands and the urgent need to protect natural systems in the ecologically fragile area. Section 305 of the Act authorizes annual grants to any coastal State for the purpose of assisting the State in the development of a management program for the land and water resources of its coastal zone (development grant). Once a coastal State has developed a management program, it is submitted to the Secretary of Commerce for approval and, if approved, the State is then eligible under Section 306 to receive annual grants for administering its management program (administrative grants).



## RULES AND REGULATIONS

part F of the proposed regulations. The revisions attempt to both clarify and reduce those requirements, while still requiring sufficient information for the Office of Coastal Zone Management to approve management programs and make sound funding decisions.

Accordingly, having considered the comments and other relevant information, the Administrator concludes by adopting the final regulations describing the procedure for application to receive administrative grants under section 306 of the Act, as modified and set forth below.

Effective date: January 8, 1975.

Dated: January 6, 1975.

ROBERT M. WHITE,  
*Administrator, National Oceanic  
and Atmospheric Administra-  
tion.*

#### Subpart A—General

- Sec. 923.1 Purpose.
- 923.2 Definitions.
- 923.3 Submission of management programs.
- 923.4 Evaluation of management programs—general.
- 923.5 Environmental impact assessment.

#### Subpart B—Land and Water Uses

- 923.10 General.
- 923.11 Boundary of the coastal zone.
- 923.12 Permissible land and water uses.
- 923.13 Areas of particular concern.
- 923.14 Guidelines on priorities.
- 923.15 National interest facilities.
- 923.16 Area designation for preservation and restoration.
- 923.17 Local regulations and uses of regional benefit.

#### Subpart C—Authorities and Organization

- 923.20 General.
- 923.21 Means of exerting State control over land and water uses.
- 923.22 Organizational structure to implement the management program.
- 923.23 Designation of a single agency.
- 923.24 Authorities to administer land and water uses, control development and resolve conflicts.
- 923.25 Authorities for property acquisition.
- 923.26 Techniques for control of land and water uses.

#### Subpart D—Coordination

- 923.30 General.
- 923.31 Full participation by relevant bodies in the adoption of management programs.
- 923.32 Consultation and coordination with other planning.

#### Subpart E—Miscellaneous

- 923.40 General.
- 923.41 Public hearings.
- 923.42 Gubernatorial review and approval.
- 923.43 Segmentation.
- 923.44 Applicability of air and water pollution control requirements.

#### Subpart F—Applications for Administrative Grants

- 923.50 General.
- 923.51 Administration of the program.
- 923.52 State responsibility.
- 923.53 Allocation.
- 923.54 Geographical segmentation.
- 923.55 Application for the initial administrative grant.
- 923.56 Approval of applications.
- 923.57 Amendments.
- 923.58 Applications for second and subsequent year grants.

Authority: 86 Stat. 1280 (16 U.S.C. 1451-1464).

#### Subpart A—General

##### § 923.1 Purpose.

(a) This part establishes criteria and procedures to be employed in reviewing and approving coastal zone management programs submitted by coastal States and for the awarding of grants under Section 306 of the Act.

(b) The Act sets forth in sections 305, 306 and 307 a number of specific requirements which a management program must fulfill as a condition for approval by the Secretary. These requirements are linked together as indicated in the subparts which follow. Presentation of the State management program in a similar format is encouraged since it will enable more prompt and systematic review by the Secretary. However, there is no requirement that a State present its management program in the format which corresponds exactly to the listing of categories below. The broad categories are: Land and Water Uses, Subpart B; Authorities and Organization, Subpart C; Coordination, Subpart D; and Miscellaneous, Subpart E. Subpart F, Applications for Administrative Grants, deals with applications for administrative grants upon approval of State coastal zone management programs which will be subject to periodic review by the Secretary in accordance with Section 309 of the Act. In addition to providing criteria against which State coastal zone management programs can be consistently and uniformly judged in the approval process and establishing procedures for the application by States for administrative grants, it is the intent of this part to provide guidance to coastal States in the development of management programs. Therefore, many of the sections dealing with approval requirement in the subparts are followed by a "comment" which refers to a section or sections of the Act and indicates the interpretation placed upon the requirements of the Act or the regulation by the Secretary.

##### § 923.2 Definitions.

In addition to the terms defined in the Act and 15 CFR 920.2, the following terms shall have the meanings indicated below:

"Final approval" means, with respect to a coastal zone management program, approval of a program which terminates the eligibility of the State for grants under Section 305 of the Act and makes the State eligible for grants under Section 306 of the Act. In cases where a State has elected to follow the geographical segmentation option pursuant to § 923.43, final approval will apply only to that specific geographical segment. The State will continue to remain eligible for development grants pursuant to Section 305 of the Act for the remainder of the State's coastal zone.

"Preliminary approval" means, with respect to a coastal zone management program, approval of a program which does not terminate the eligibility of the State for further grants under Section

305 of the Act, and which does not make the State eligible for grants under Section 306 of the Act.

"Use of regional benefit" means a land or water use that typically provides benefits to a significant area beyond the boundaries of a single unit of the lowest level of local, general-purpose government.

##### § 923.3 Submission of management programs.

(a) Upon completion of the development of its management program, a State shall submit the program to the Secretary for review and final approval in accordance with the provisions of these regulations. A program submitted for final approval must comply with all of the provisions set forth in Subparts A-E of this part, including, in particular, Subpart C, which requires that certain authorities and plans of organization be in effect at the time of the submission.

(b) Optionally, the State may submit for the preliminary approval of the Secretary a program complying with the substantive requirements of this part, but for which the proposed authorities and organization complying with the provisions of Subpart C are not yet legally effective. In reviewing a program submitted for preliminary approval, the Secretary may grant such approval subject to establishment of a legal regime providing the authorities and organization called for in the program. If the State elects this option, it shall continue to be eligible for funding under Section 305 but it shall not yet be eligible for funding under Section 306 of the Act until such time as its program is finally approved. Upon a showing by the State that authorities and organization necessary to implement the program which has received preliminary approval are in effect, final approval shall be granted.

*Comment.* The purpose of the optional procedure is to provide a State with an opportunity for Secretarial review of its program before State legislation is enacted to put the program into legal effect. Some States may prefer not to utilize the optional procedure, especially those which have legislative authority enabling the coastal zone agency of the State to put the program into effect by administrative action. In any event, the Office of Coastal Zone Management will be available for consultation during all phases of development of the program.

(c) States completing the requirements set forth in Subpart B—Land and Water Uses, and Subpart D—Coordination, will be deemed to have fulfilled the statutory requirements associated with each criteria. If, however, a State chooses to adopt alternative methods and procedures, which are at least as comprehensive as the procedures set forth below, for fulfilling those statutory requirements contained in Subparts B and D, they may do so upon prior written approval of the Secretary. The States are encouraged to consult with the Office of Coastal Zone Management as early as possible.

*Comment.* The thrust of the Act is to encourage coastal States to exercise their full

authority over the lands and waters in the coastal zone by developing land and water use programs for the zone, including unified policies, criteria, standards, methods and processes for dealing with land and water uses of more than local significance. While the Act mandates a State to meet specific statutory requirements in order for the State to be eligible for administrative grants, it does not require the State to follow specific processes in meeting those requirements. The Secretary will review any State management program that meets the requirements contained in Subparts B and D in addition to the other subparts contained herein.

#### § 923.4 Evaluation of management programs—general.

(a) In reviewing management programs submitted by a coastal State pursuant to § 923.3, the Secretary will evaluate not only all of the individual program elements required by the Act and set forth in Subparts B-E of this part, but the objectives and policies of the State program as well to assure that they are consistent with national policies declared in Section 303 of the Act.

(b) Each program submitted for approval shall contain a statement of problems and issues, and objectives and policies. The statements shall address:

(1) Major problems and issues, both within and affecting the State's coastal zone;

(2) Objectives to be attained in inter-agency and intergovernmental cooperation, coordination and institutional arrangements, and enhancing management capability involving issues and problem identification, conflict resolution, regulation and administrative efficiency at the State and local level;

(3) Objectives of the program in preservation, protection, development, restoration and enhancement of the State's coastal zone;

(4) Policies for the protection and conservation of coastal zone natural systems, cultural, historic and scenic areas, renewable and non-renewable resources, and the preservation, restoration and economic development of selected coastal zone areas.

(c) The Secretary will review the management program for the adequacy of State procedures utilized in its development and will consider the extent to which its various elements have been integrated into a balanced and comprehensive program designed to achieve the above objectives and policies.

*Comment.* Evaluation of the statutory requirements established in this subpart will concentrate primarily upon the adequacy of State processes in dealing with key coastal problems and issues. It will not, in general, deal with the wisdom of specific land and water use decisions, but rather with a determination that in addressing those problems and issues, the State is aware of the full range of present and potential needs and uses of the coastal zone, and has developed procedures, based upon scientific knowledge, public participation and unified governmental policies, for making reasoned choices and decisions.

Management programs will be evaluated in the light of the Congressional findings and policies as contained in Sections 302 and 303 of the Act. These sections make it clear that

Congress, in enacting the legislation, was concerned about the environmental degradation, damage to natural and scenic areas, loss of living marine resources and wildlife, decreasing open space for public use and shoreline erosion being brought about by population growth and economic development. The Act thus has a strong environmental thrust, stressing the "urgent need to protect and to give high priority to natural systems in the coastal zone." A close working relationship between the agency responsible for the coastal zone management program and the agencies responsible for environmental protection is vital in carrying out this legislative intent. States are encouraged by the Act to take into account ecological, cultural, historic and esthetic values as well as the need for economic development in preparing and implementing management programs through which the States, with the participation of all affected interests and levels of government, exercise their full authority over coastal lands and waters.

Further assistance in meeting the intent of the Act may be found in the Congressional Committee Reports associated with the passage of the legislation (Senate Report 92-753 and House Report 92-1049). It is clear from these reports that Congress intended management programs to be comprehensive and that a State must consider all subject areas which are pertinent to the particular circumstances which prevail in the State. A comprehensive program should have considered at least the following representative elements:

- (1) Present laws, regulations, and applicable programs for attainment of air and water quality standards, on land and water uses, and on environmental management by all levels of government;
- (2) Present ownership patterns of the land and water resources, including administration of publicly owned properties;
- (3) Present populations and future trends, including assessments of the impact of population growth on the coastal zone and estuarine environments;
- (4) Present uses, known proposals for changes and long-term requirements of the coastal zone;
- (5) Energy generation and transmission;
- (6) Estuarine habitats of fish, shellfish and wildlife;
- (7) Industrial needs;
- (8) Housing requirements;
- (9) Recreation, including beaches, parks, wildlife preserves, sport fishing, swimming and pleasure boating;
- (10) Open space, including educational and natural preserves, scenic beauty, and public access, both visual and physical, to coastlines and coastal estuarine areas;
- (11) Mineral resources requirements;
- (12) Transportation and navigation needs;
- (13) Floods and flood damage prevention, erosion (including the effect of tides and currents upon beaches and other shoreline areas), land stability, climatology and meteorology;
- (14) Communication facilities;
- (15) Commercial fishing; and
- (16) Requirements for protecting water quality and other important natural resources.

The list of considerations is not meant to be exclusive, nor does it mean that each consideration must be given equal weight. State initiative to determine other relevant factors and consider them in the program is essential to the management of the coastal zone as envisioned by Congress.

In assessing programs submitted for approval, the Secretary, in consultation with other concerned Federal agencies, will examine such programs to determine that the full range of public problems and issues affecting the coastal zone have been identified

and considered. In this connection, developments outside the coastal zone may often have a significant impact within the coastal zone and create a range of public problems and issues which must be dealt with in the coastal zone management program.

The Secretary encourages the States to develop objectives toward which progress can be measured and will review program submissions in this light. While it is recognized that many essential coastal zone management objectives are not quantifiable (e.g. public aspirations, "quality of life"), others are, and should be set forth in measurable terms where feasible (e.g. shore erosion, beach access, recreational demand, energy facility requirements). Identifying and analyzing problems and issues in measurable terms during the program development phase will facilitate the formulation of measurable objectives as part of the approval submission.

#### § 923.5 Environmental impact assessment.

Individual environmental impact statements will be prepared and circulated by NOAA as an integral part of the review and approval process for State coastal zone management programs pursuant to the National Environmental Policy Act (Pub. L. 91-190, 42 USC 4321 et seq) and its implementing regulations. The Administrator of NOAA will circulate an environmental impact statement prepared primarily on the basis of an environmental impact assessment and other relevant data submitted by the individual applicant States.

#### Subpart B—Land and Water Uses

##### § 923.10 General.

(a) This subpart deals with land and water uses in the coastal zone which are subject to the management program.

(b) In order to provide a relatively simple framework upon which discussion of the specific requirements associated with this subpart may proceed, it may be helpful to categorize the various types of land and water uses which the Act envisions.

(1) The statutory definition of the landward portion of the coastal zone states that it "extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters." Thus, the coastal zone will include those lands and only those lands where any existing, projected or potential use will have a "direct and significant impact on the coastal waters." Any such use will be subject to the terms of the management program, pursuant to Section 305(b)(2).

(2) There may well be uses of certain lands included within the coastal zone which will not have such "direct and significant impact." Such uses may be subject to regulation by local units of government within the framework of the management program.

(3) The Act also requires that management programs contain a method of assuring that "local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." This requirement is described more fully in § 923.17.



(c) As part of the State's management program, it must address and exercise authority over the following:

(1) Land and water uses which have a direct and significant impact upon coastal waters. These uses are described more fully in § 923.12.

(2) Areas of particular concern. Section 305(b)(3) specifies that the management program include an inventory and designation of areas of particular concern within the coastal zone. Section 923.13 deals more thoroughly with this statutory requirement. Such areas must be considered of Statewide concern and must be addressed in the management program.

(3) Siting of facilities necessary to meet requirements which are other than local in nature. The management program must take "adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature" (Section 306(c)(8)). This requirement is more fully discussed in § 923.15.

#### § 923.11 Boundaries of the coastal zone.

(a) Requirement. In order to fulfill the requirement contained in Section 305(b)(1), the management program must show evidence that the State has developed and applied a procedure for identifying the boundary of the State's coastal zone meeting the statutory definition of the coastal zone contained in Section 304(a). At a minimum this procedure should result in:

(1) A determination of the inland boundary required to control, through the management program, shorelands the uses of which have direct and significant impacts upon coastal waters.

(2) A determination of the extent of the territorial sea, or where applicable, of State waters in the Great Lakes.

(3) An identification of transitional and intertidal areas, salt marshes, wetlands and beaches.

(4) An identification of all Federally owned lands, or lands which are held in trust by the Federal government, its officers and agents in the coastal zone and over which a State does not exercise any control as to use.

(b) Comment. Statutory citation: Section 305(b)(1):

Such management program shall include . . . an identification of the boundaries of the coastal zone subject to the management programs.

Useful background information concerning this requirement appears in Part 920.11, which is incorporated into this part by reference.

(1) The key to successful completion of this requirement lies in the development and use of a procedure designed to identify the landward extent of the coastal zone. Included in this procedure must be a method for determining those "shorelands, the uses of which have a direct and significant impact upon the coastal waters." These uses shall be considered the same as the "land and water uses" described in § 923.12, reflecting the requirements of Section 305(b)(2) of

the Act regardless of whether those uses are found, upon analysis, to be "permissible." The coastal zone must include within it those lands which have any existing, projected or potential uses which have a direct and significant impact upon the coastal waters and over which the terms of the management program will be exercised. In some States, existing regulations controlling shoreland uses apply only in a strip of land of uniform depth (e.g. 250 feet, 1,000 yards, etc.) behind the shoreline. Such a boundary will be acceptable if it approximates a boundary developed according to the procedure outlined above and extends inland sufficiently for the management program to control lands the uses of which have a direct and significant impact upon coastal waters. States may wish, for administrative convenience, to designate political boundaries, cultural features, property lines or existing designated planning and environmental control areas, as boundaries of the coastal zone. While the Secretary will take into account the desirability of identifying a coastal zone which is easily regulated as a whole, the selection of the boundaries of the coastal zone must bear a reasonable relationship to the statutory requirement. Nothing in this part shall preclude a State from exercising the terms of the management program in a landward area more extensive than the coastal zone called for in this part. If such a course is selected, the boundaries of the coastal zone must nevertheless be identified as above and the provisions of the Act will be exercised only in the defined coastal zone. It should be borne in mind that the boundary should include lands and waters which are subject to the management program. This means that the policies, objectives and controls called for in the management program must be capable of being applied consistently within the area. The area must not be so extensive that a fair application of the management program becomes difficult or capricious, nor so limited that lands strongly influenced by coastal waters and over which the management program should reasonably apply, are excluded.

(2) Inasmuch as the seaward boundary of the coastal zone is established in the Act, the States will be required to utilize the statutory boundary, i.e. in the Great Lakes, the international boundary between the United States and Canada, and elsewhere the outer limits of the United States territorial sea. At present, this limit is three nautical miles from the appropriate baselines recognized by international law and defined precisely by the United States. In the event of a statutory change in the boundary of the territorial sea, the question of whether a corresponding change in coastal zone boundaries must be made, or will be made by operation of law, will depend on the specific terms of the statutory change and cannot be resolved in advance. In the waters of Lake Michigan, the boundary shall extend to the recognized boundaries with adjacent States.

(3) A State's coastal zone must include transitional and intertidal areas, salt marshes, wetlands and beaches. Hence the boundary determination procedure must include a method of identifying such coastal features. In no case, however, will a State's landward coastal zone boundary include only such areas in the absence of application of the procedure called for herein or in § 923.43.

(4) Since the coastal zone excludes lands the use of which is by law subject solely to the discretion of, or which is held in trust by the Federal government, its officers and agents, the coastal zone boundary must identify such lands which are excluded from the coastal zone. In order to complete this requirement, the State should indicate those Federally owned lands, or lands held in trust by the Federal government, and over which the State does not exercise jurisdiction as to use. In the event that a State fails to identify lands held by an agency of the Federal government as excluded lands, and the agency, after review of the program under Section 307(b), is of the opinion that such lands should be excluded, the disagreement will be subject to the mediation process set forth in said section.

#### § 923.12 Permissible land and water uses.

(a) Requirement. In order to fulfill the requirements contained in Section 305(b)(2), the management must show evidence that the State has developed and applied a procedure for defining "permissible land and water uses within the coastal zone which have a direct and significant impact upon the coastal waters," which includes, at a minimum:

(1) a method for relating various specific land and water uses to impact upon coastal waters, including utilization of an operational definition of "direct and significant impact,"

(2) an inventory of natural and man-made coastal resources,

(3) an analysis or establishment of a method for analysis of the capability and suitability for each type of resource and application to existing, projected or potential uses.

(4) an analysis or establishment of a method for analysis of the environmental impact of reasonable resource utilizations.

(b) Comment. Statutory citation: Section 305(b)(2):

Such management program shall include . . . a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact upon the coastal waters.

Useful background information concerning this requirement appears in 15 CFR 920.12, which is incorporated into this part by reference. Completion of this requirement should be divided into two distinct elements: a determination of those land and water uses having a direct and significant impact upon coastal waters, and an identification of such uses which the State deems permissible.

(1) Section 305(b)(4). In identifying those uses which have a "direct and sig-

(c) As part of the State's management program, it must address and exercise authority over the following:

(1) *Land and water uses which have a direct and significant impact upon coastal waters.* These uses are described more fully in § 923.12.

(2) *Areas of particular concern.* Section 305(b)(3) specifies that the management program include an inventory and designation of areas of particular concern within the coastal zone. Section 923.13 deals more thoroughly with this statutory requirement. Such areas must be considered of Statewide concern and must be addressed in the management program.

(3) *Siting of facilities necessary to meet requirements which are other than local in nature.* The management program must take "adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature" (Section 306(c)(8)). This requirement is more fully discussed in § 923.15.

#### § 923.11 Boundaries of the coastal zone.

(a) *Requirement.* In order to fulfill the requirement contained in Section 305(b)(1), the management program must show evidence that the State has developed and applied a procedure for identifying the boundary of the State's coastal zone meeting the statutory definition of the coastal zone contained in Section 304(a). At a minimum this procedure should result in:

(1) A determination of the inland boundary required to control, through the management program, shorelands the uses of which have direct and significant impacts upon coastal waters,

(2) A determination of the extent of the territorial sea, or where applicable, of State waters in the Great Lakes,

(3) An identification of transitional and intertidal areas, salt marshes, wetlands and beaches,

(4) An identification of all Federally owned lands, or lands which are held in trust by the Federal government, its officers and agents in the coastal zone and over which a State does not exercise any control as to use.

(b) *Comment.* Statutory citation: Section 305(b)(1):

Such management program shall include . . . an identification of the boundaries of the coastal zone subject to the management programs.

Useful background information concerning this requirement appears in Part 920.11, which is incorporated into this part by reference.

(1) *The key to successful completion of this requirement lies in the development and use of a procedure designed to identify the landward extent of the coastal zone.* Included in this procedure must be a method for determining those "shorelands, the uses of which have a direct and significant impact upon the coastal waters." These uses shall be considered the same as the "land and water uses" described in § 923.12, reflecting the requirements of Section 305(b)(2) of

the Act regardless of whether those uses are found, upon analysis, to be "permissible." The coastal zone must include within it those lands which have any existing, projected or potential uses which have a direct and significant impact upon the coastal waters and over which the terms of the management program will be exercised. In some States, existing regulations controlling shoreland uses apply only in a strip of land of uniform depth (e.g. 250 feet, 1,000 yards, etc.) behind the shoreline. Such a boundary will be acceptable if it approximates a boundary developed according to the procedure outlined above and extends inland sufficiently for the management program to control lands the uses of which have a direct and significant impact upon coastal waters. States may wish, for administrative convenience, to designate political boundaries, cultural features, property lines or existing designated planning and environmental control areas, as boundaries of the coastal zone. While the Secretary will take into account the desirability of identifying a coastal zone which is easily regulated as a whole, the selection of the boundaries of the coastal zone must bear a reasonable relationship to the statutory requirement. Nothing in this part shall preclude a State from exercising the terms of the management program in a landward area more extensive than the coastal zone called for in this part. If such a course is selected, the boundaries of the coastal zone must nevertheless be identified as above and the provisions of the Act will be exercised only in the defined coastal zone. It should be borne in mind that the boundary should include lands and waters which are subject to the management program. This means that the policies, objectives and controls called for in the management program must be capable of being applied consistently within the area. The area must not be so extensive that a fair application of the management program becomes difficult or capricious, nor so limited that lands strongly influenced by coastal waters and over which the management program should reasonably apply, are excluded.

(2) Inasmuch as the seaward boundary of the coastal zone is established in the Act, the States will be required to utilize the statutory boundary, i.e. in the Great Lakes, the international boundary between the United States and Canada, and elsewhere the outer limits of the United States territorial sea. At present, this limit is three nautical miles from the appropriate baselines recognized by international law and defined precisely by the United States. In the event of a statutory change in the boundary of the territorial sea, the question of whether a corresponding change in coastal zone boundaries must be made, or will be made by operation of law, will depend on the specific terms of the statutory change and cannot be resolved in advance. In the waters of Lake Michigan, the boundary shall extend to the recognized boundaries with adjacent States.

(3) A State's coastal zone must include transitional and intertidal areas, salt marshes, wetlands and beaches. Hence the boundary determination procedure must include a method of identifying such coastal features. In no case, however, will a State's landward coastal zone boundary include only such areas in the absence of application of the procedure called for herein or in § 923.43.

(4) Since the coastal zone excludes lands the use of which is by law subject solely to the discretion of, or which is held in trust by the Federal government, its officers and agents, the coastal zone boundary must identify such lands which are excluded from the coastal zone. In order to complete this requirement, the State should indicate those Federally owned lands, or lands held in trust by the Federal government, and over which the State does not exercise jurisdiction as to use. In the event that a State fails to identify lands held by an agency of the Federal government as excluded lands, and the agency, after review of the program under Section 307(b), is of the opinion that such lands should be excluded, the disagreement will be subject to the mediation process set forth in said section.

#### § 923.12 Permissible land and water uses.

(a) *Requirement.* In order to fulfill the requirements contained in Section 305(b)(2), the management program must show evidence that the State has developed and applied a procedure for defining "permissible land and water uses within the coastal zone which have a direct and significant impact upon the coastal waters," which includes, at a minimum:

(1) a method for relating various specific land and water uses to impact upon coastal waters, including utilization of an operational definition of "direct and significant impact,"

(2) an inventory of natural and man-made coastal resources,

(3) an analysis or establishment of a method for analysis of the capability and suitability for each type of resource and application to existing, projected or potential uses.

(4) an analysis or establishment of a method for analysis of the environmental impact of reasonable resource utilizations.

(b) *Comment.* Statutory citation: Section 305(b)(2):

Such management program shall include . . . a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact upon the coastal waters.

Useful background information concerning this requirement appears in 15 CFR 920.12, which is incorporated into this part by reference. Completion of this requirement should be divided into two distinct elements: a determination of those land and water uses having a direct and significant impact upon coastal waters, and an identification of such uses which the State deems permissible.

(1) *Section 305(b)(4).* In identifying those uses which have a "direct and sig-

nificant impact," the State should define that phrase in operational terms that can be applied uniformly and consistently, and should develop a method for relating various uses to impacts upon coastal waters. Existing, projected and potential uses should be analyzed as to the level and extent of their impact, be it adverse, benign or beneficial, intra-state or interstate. These impacts should then be assessed to determine whether they meet the definition of "direct and significant impact upon coastal waters." (These are the ones by which the boundaries of the coastal zone are defined.) Those uses meeting that definition are automatically subject to control by the management program.

(2) In determining which land and water uses may be deemed permissible, a State should develop a method for assuring that such decisions are made in an objective manner, based upon evaluation of the best available information concerning land and water capability and suitability. This method should include at a minimum:

(i) An inventory of significant natural and man-made coastal resources, including but not limited to, shorelands, beaches, dunes, wetlands, uplands, barrier islands, waters, bays, estuaries, harbors and their associated facilities. This should not be construed as requiring long-term, continuing research and baseline studies, but rather as providing the basic information and data critical to successful completion of a number of required management program elements. States are encouraged, however, to continue research and studies as necessary to detect early warnings of changes to coastal zone resources. It is recognized that in some States a complete and detailed inventory of such resources may be expensive and time consuming in relation to the value of information gathered in the development of the management program. Much information, of course, already exists and should be integrated into the inventory. The Secretary, in reviewing this particular requirement, will take into account the nature and extent of the State's coastline, the funding available and existing data sources.

(ii) An analysis or establishment of a method for analysis of the capabilities of each resource for supporting various types of uses (including the capability for sustained and undiminished yield of renewable resources), as well as of the suitability for such resource utilization when evaluated in conjunction with other local, regional and State resources and uses. Resource capability analysis should include physical, biological and chemical parameters as necessary.

(iii) An analysis or establishment of a method for analysis of the impact of various resource uses upon the natural environment (air, land and water). Based upon these analyses and applicable Federal, State and local policies and standards, the State should define permissible uses as those which can be reasonably and safely supported by the resource, which are compatible with

surrounding resource utilization and which will have a tolerable impact upon the environment. These analyses, in part, will be provided through existing information on environmental protection programs, and should be supplemented to the extent necessary for determining the relationship between land uses and environmental quality. Where a State prohibits a use within the coastal zone, or a portion thereof, it should identify the reasons for the prohibition, citing evidence developed in the above analyses. It should be pointed out that uses which may have a direct and significant impact on coastal waters when conducted close to the shoreline may not have a direct and significant impact when conducted further inland. Similarly, uses which may be permissible in a highly industrialized area may not be permissible in a pristine marshland. Accordingly, the definition may also be correlated with the nature (including current uses) and location of the land on which the use is to take place. The analyses which the State will undertake pursuant to this section should also be useful in satisfying the requirements of § 923.13 through § 923.17.

#### § 923.13 Areas of particular concern.

(a) *Requirement.* In order to fulfill the requirements contained in Section 305 (b)(3), the management program must show evidence that the State has made an inventory and designation of areas of particular concern within the coastal zone. Such designations shall be based upon a review of natural and man-made coastal zone resources and uses, and upon consideration of State-established criteria which include, at a minimum, those factors contained in 15 CFR 920.13, namely:

(1) Areas of unique, scarce, fragile or vulnerable natural habitat, physical feature, historical significance, cultural value and scenic importance;

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife and the various trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique geologic or topographic significance to industrial or commercial development;

(6) Areas of urban concentration where shoreline utilization and water uses are highly competitive;

(7) Areas of significant hazard if developed, due to storms, slides, floods, erosion, settlement, etc.; and

(8) Areas needed to protect, maintain or replenish coastal lands or resources, including coastal flood plains, aquifer recharge areas, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(b) *Comment.* Statutory citation: Section 305(b)(3).

Such management program shall include . . . an inventory and designation of areas of particular concern within the coastal zone.

Useful background information concerning the requirement appears in 15 CFR 920.13, which is incorporated here by reference. It should be emphasized that the basic purpose of inventorying and designating areas of particular concern within the coastal zone is to express some measure of Statewide concern about them and to include them within the purview of the management program. Therefore, particular attention in reviewing the management program will be directed toward development by the State of implementing policies or actions to manage the designated areas of particular concern.

#### § 923.14 Guidelines on priority of uses.

(a) *Requirement.* The management program shall include broad policies or guidelines governing the relative priorities which will be accorded in particular areas to at least those permissible land and water uses identified pursuant to § 923.12. The priorities will be based upon an analysis of State and local needs as well as the effect of the uses on the area. Uses of lowest priority will be specifically stated for each type of area.

(b) *Comment.* Statutory citation: Section 305(b)(5).

Such management program shall include . . . broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority.

As pointed out in 15 CFR 920.15, the priority guidelines will set forth the degree of State interest in the preservation, conservation and orderly development of specific areas including at least those areas of particular concern identified in § 923.13 within the coastal zone, and thus provide the basis for regulating land and water uses in the coastal zone, as well as a common reference point for resolving conflicts. Such priority guidelines will be the core of a successful management program since they will provide a framework within which the State, its agencies, local governments and regional bodies can deal with specific proposals for development activities in various areas of the coastal zone. In order to develop such broad guidelines, the management program shall indicate that a method has been developed and applied for (1) analyzing State needs which can be met most effectively and efficiently through land and water uses in the coastal zone, and (2) determining the capability and suitability of meeting these needs in specific locations in the coastal zone. In analyzing the States' needs, there should be a determination made of those requirements and uses which have Statewide, as opposed to local, significance. Section 302(h) of the Act states in part that land and water use programs for the coastal zone should include "unified policies, criteria, standards, methods and processes for dealing with land and water use decisions of more than local significance." The inventory and analyses of coastal resources and uses called for in § 923.12 will provide the State with most of the basic data needed to determine the specific locations where coastal resources are capable and suitable for meeting State-

wide needs. In addition, these analyses should permit the State to determine possible constraints on development which may be applied by particular uses. The program should establish special procedures for evaluating land use decisions, such as the siting of regional energy facilities, which may have a substantial impact on the environment. In such cases, the program should make provision for the consideration of available alternative sites which will serve the need with a minimum adverse impact. The identifying and ordering of use priorities in specific coastal areas should lead to the development and adoption of State policies or guidelines on land and water use in the coastal zone. Such policies or guidelines should be part of the management program as submitted by the State and should be consistent with the State's specified management program objectives. Particular attention should be given by the State to applying these guidelines on use priorities within those "areas of particular concern" designated pursuant to § 923.13. In addition, States shall indicate within the management program uses of lowest priority in particular areas, including guidelines associated with such uses.

**§ 923.15 National interest in the siting of facilities.**

(a) *Requirement.* A management program which integrates (through development of a body of information relating to the national interest involved in such siting through consultation with cognizant Federal and regional bodies, as well as adjacent and nearby States) the siting of facilities meeting requirements which are of greater than local concern into the determination of uses and areas of Statewide concern, will meet the requirements of Section 306(c) (8).

(b) *Comment.* Statutory citation: Section 306(c) (8):

Prior to granting approval of a management program submitted by a coastal State, a Secretary shall find that . . . the management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

This policy requirement is intended to assure that national concerns over facility siting are expressed and dealt with in the development and implementation of State coastal zone management programs. The requirement should not be construed as compelling the States to propose a program which accommodates certain types of facilities, but to assure that such national concerns are included at an early stage in the State's planning activities and that such facilities not be arbitrarily excluded or unreasonably restricted in the management program without good and sufficient reasons. It is recognized that there may or may not be a national interest associated with the siting of facilities necessary to meet requirements which are other than local in nature. Requirements which are other than local in nature shall be considered those requirements which, when fulfilled, result in the establishment of facilities designed clearly to serve more

than one locality (generally, the lowest unit of local, general-purpose government, excluding situations such as with cities and counties which exercise concurrent jurisdiction for the same geographic areas). In order to provide assistance to the States in completing this requirement, a listing is presented below which identifies those requirements which are both (1) other than local in nature, and (2) possess siting characteristics in which, in the opinion of the Secretary, there may be a clear national interest. For each such need, there is a listing of associated facilities. In addition, the principal cognizant Federal agencies concerned with these facilities are also listed. This list must not be considered inclusive, but the State should consider each requirement and facility type in the development of its management program. Consideration of these requirements and facilities need not be seen as a separate and distinct element of the management program, and the listing is provided to assure that the siting of such facilities is not overlooked or ignored. As part of its determination of permissible uses in the coastal zone (§ 923.12), as well as of priority of uses (§ 923.14), the State will have developed a procedure for inventorying coastal resources and identifying their existing or potential utilization for various purposes based upon capability, suitability and impact analyses. The process for responding to the requirements of Section 306(c) (8) should be identical to, and part of, the same procedure. No separate national interest "test" need be applied and submitted other than evidence that the listed national interest facilities have been considered in a manner similar to all other uses, and that appropriate consultation with the Federal agencies listed has been conducted. As a preliminary to adequate consideration of the national interest, the State must determine the needs for such facilities. Management programs must recognize the need of local as well as regional and national populations for goods and services which

can be supplied only through the use of facilities in the coastal zone in order to make reasonable provision for such facilities in light of the size and population of the State, the length and characteristics of its coast and the contribution such State is already making to regional and national needs. This will require the State to enter into discussions with appropriate Federal agencies and agencies of other States in the region, a process which should begin early in the development of the management program so that the full dimensions of the national interest may be considered as the State develops its program (§ 923.31 and § 923.32). The management program should make reference to the views of cognizant Federal agencies as to how these national needs may be met in the coastal zone of that particular State. States should actively seek such guidance from these Federal agencies, particularly in view of the fact that all management programs will be reviewed with the opportunity for full comment by all affected Federal agencies prior to approval. It is recognized that Federal agencies will differ markedly in their abilities to articulate policies regarding utilization of individual State's coastal zones. NOAA's Office of Coastal Zone Management will encourage Federal agencies to develop policy statements regarding their perception of the national interest in the coastal zone and make these available to the States. The States should also consult with adjacent and nearby States which share similar or common coastal resources or with regional interstate bodies to determine how regional needs may be met in siting facilities. Specific arrangements of "trade-offs" of coastal resource utilization should be documented with appropriate supporting evidence. The importance of this type of interstate consultation and cooperation in planning cannot be overemphasized for it offers the States the opportunity of resolving significant national problems on a regional scale without Federal intervention.

*Requirements which are other than local in nature and in the siting of which there may be a clear national interest (with associated facilities and cognizant Federal agencies)*

Requirements	Associated facilities	Cognizant Federal Agencies
1. Energy production and transmission.	Oil and gas wells; storage and distribution facilities; refineries; nuclear, conventional, and hydroelectric powerplants; deepwater ports.	Federal Energy Administration, Federal Power Commission, Bureau of Land Management, Atomic Energy Commission, Maritime Administration, Geological Survey, Department of Transportation, Corps of Engineers.
2. Recreation (of an interstate nature) . . .	National seashores, parks, forests; large and outstanding beaches and recreational waterfronts; wildlife reserves.	National Park Service, Forest Service, Bureau of Outdoor Recreation.
3. Interstate transportation . . . . .	Interstate highways, airports, aids to navigation; ports and harbors, railroads.	Federal Highway Administration, Federal Aviation Administration, Coast Guard, Corps of Engineers, Maritime Administration, Interstate Commerce Commission.
4. Production of food and fiber . . . . .	Prime agricultural land and facilities; forests; mariculture facilities; fisheries.	Soil Conservation Service, Forest Service, Fish and Wildlife Service, National Marine Fisheries Service.
5. Preservation of life and property . . . .	Flood and storm protection facilities; disaster warning facilities.	Corps of Engineers, Federal Insurance Administration, NOAA, Soil Conservation Service.
6. National defense and aerospace . . . . .	Military installations; defense manufacturing facilities; aerospace launching and tracking facilities.	Department of Defense, NASA.
7. Historic, cultural, esthetic and conservation values.	Historic sites; natural areas; areas of unique cultural significance; wildlife refuges; areas of species and habitat preservation.	National Register of Historic Places, National Park Service, Fish and Wildlife Service, National Marine Fisheries Service.
8. Mineral resources . . . . .	Mineral extraction facilities needed to directly support activity.	Bureau of Mines, Geological Survey.

**§ 923.16 Area designation for preservation and restoration.**

(a) *Requirement.* In order to fulfill the requirement contained in Section 306(c) (9), the management program must show evidence that the State has developed and applied standards and criteria for the designation of areas of conservation, recreational, ecological or esthetic values for the purpose of preserving and restoring them.

(b) *Comment.* Statutory citation: Section 306(c) (9):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreation, ecological or esthetic values.

(1) This requirement is closely linked to that contained in § 923.13, dealing with designation of areas of particular concern. Unless the State can make a compelling case to the contrary, all areas designated according to the methods called for in this part shall also be considered as areas of particular concern.

(2) This requirement is reasonably self-explanatory. The State must develop procedures for the designation of areas with certain characteristics. The State, in doing so, must:

(i) Establish standards and criteria for the possible designation of coastal areas intended for preservation or restoration because of their conservation, recreational, ecological or esthetic values, and

(ii) Apply those standards and criteria to the State's coastal resources. (In this, the inventory associated with the requirement of § 923.13 will be most helpful.)

(3) The requirement of the statute goes to the procedures rather than substance; the fact that a State may be unable to move rapidly ahead with a program of preservation or restoration will not prevent the program from being approved. The State should also rank in order of relative priority areas of its coastal zone which have been designated for the purposes set forth in this section. As funds become available, such a ranking will provide a set of priorities for selecting areas to be preserved or restored.

**§ 923.17 Local regulations and uses of regional benefit.**

(a) *Requirement.* In order to fulfill the requirement contained in Section 306(e) (2), the management program must show evidence that the State has developed and applied a method for determining uses of regional benefit, and that it has established a method for assuring that local land and water use controls in the coastal zone do not unreasonably or arbitrarily restrict or exclude those uses of regional benefit.

(b) *Comment.* Statutory citation: Section 306(e) (2):

Prior to granting approval, the Secretary shall also find that the program provides . . . for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or

exclude land and water uses of regional benefit.

This requirement is intended to prevent local land and water use decisions from arbitrarily excluding certain land and water uses which are deemed of importance to more than a single unit of local government. For the purposes of this requirement, a use of regional benefit will be one which provides services or other benefits to citizens of more than one unit of local, general-purpose government (excluding situations such as in cities and counties which exercise jurisdiction over the same geographic areas). In order to assure that arbitrary exclusion does not occur, the State must first identify those uses which it perceives will affect or produce some regional benefit. This designation would normally be derived from the inventory and analysis of the uses contained in § 923.12. In any event, however, these uses should include those contained in the table of § 923.15. In addition, the State may determine that certain land and water uses may be of regional benefit under certain sets of circumstances; the State should then establish standards and criteria for determining when such conditions exist. There should be no blanket exclusion or restrictions of these uses in areas of the coastal zone by local regulation unless it can be shown that the exclusion or restriction is based upon reasonable considerations of the suitability of the area for the uses or the carrying capacity of the area. The requirement of this section does not exclude the possibility that in specific areas certain uses of regional benefit may be prohibited. However, such exclusions may not be capricious. The method by which the management program will assure that such unreasonable restrictions or exclusion not occur in local land and water use decisions will, of course, be up to the State, but it should include the preparation of standards and criteria relating to State interpretation of "unreasonable restriction or exclusion", as well as the establishment of a continuing mechanisms for such determination.

**Subpart C—Authorities and Organization**

**§ 923.20 General.**

This subpart deals with requirements that the State possess necessary authorities to control land and water uses and that it be organized to implement the management. It should be emphasized that before final approval of a coastal zone management program can be given by the Secretary of Commerce, the authorities and organizational structure called for in the management program must be in place. Preliminary approval, however, can be given to a proposal which will require subsequent legislative or executive action for implementation and eligibility for administrative grants under Section 306.

**§ 923.21 Means of exerting State control over land and water uses.**

(a) *Requirement.* In order to fulfill the requirements contained in Sections 305(b) (4) and 306(c) (7), the management program must show evidence that

the State has identified a means for controlling each permissible land and water use specified in § 923.12 and for excluding land and water uses in the coastal zone which are not permissible. The management program should contain a list of relevant constitutional provisions, legislative enactments, regulations, judicial decisions and other appropriate official documents or actions which establish the legal basis for such controls, as well as documentation by the Governor or his designated legal officer that the State actually has and is prepared to implement the authorities, including those contained in Section 306(d), required to implement the objectives, policies and individual components of the program.

(b) *Comment.* Statutory citation: Section 305(b) (4):

Such management program shall include . . . an identification of the means by which the State proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations and judicial decisions;

Statutory citation: Section 306(c) (7):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the State has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

Useful information concerning this requirement appears in 15 CFR 920.14, which is incorporated into this part by reference. The key words in this requirement are, "to exert control over the land and water uses." This reflects the Congressional finding that the "key to more effective protection and use of the land and water resources of the coastal zone is to encourage the States to exercise their full authority over the lands and waters in the coastal zone . . ." It is not the intent of this part to specify for the States the "means" of control; this is a State responsibility. The State must, however, describe in the management program its rationale for developing and deciding upon such "means." The "means" must be capable of actually implementing the objectives, policies and individual components of the management program. As such, requirements shall be reviewed in close conjunction with § 923.24, 923.25 and § 923.26, relating to actual authorities which the State must possess. The management program should also indicate those specific land and water uses over which authority, jurisdiction or control will be exercised concurrently by both State and Federal agencies, particularly those uses affecting water resources, submerged lands and navigable waters. The management program must provide for control of land and water uses in the coastal zone, although the exercise of control may be vested in, or delegated to, various agencies or local government. As part of the approval of a management program, the Secretary must find that the means for controlling land and water uses identified in § 923.21 are established and in place, and that the means include the



authorities contained in § 923.24 and § 923.25. This finding will be based upon documentation by the Governor of the coastal State or his designated legal officer that the State possesses and is prepared to implement the requisite authorities.

**§ 923.22 Organizational structure to implement the management program.**

(a) *Requirement.* In order to fulfill the requirement contained in Section 305(b) (6), the management program must contain a description of how the State is organized to implement the authorities identified in § 923.21. In addition, the management program must contain a certification by the Governor of the State or his designated legal officer that the State has established its organizational structure to implement the management program.

(b) *Comment.* Statutory citation: Section 305(b) (6):

Such management program shall include . . . a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, area-wide, State, regional and interstate agencies in the management process.

Statutory citation: Section 306(c) (6):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the State is organized to implement the management program required under paragraph (1) of this subsection.

Useful background information and guidance concerning this requirement appears in 15 CFR 920.16, which is incorporated into this part by reference. The legislative history of the Act makes it clear that the States should be accorded maximum flexibility in organizing for implementation of their coastal zone management programs. Thus, neither the Act nor this part provide an organizational model which must be followed. While individual State programs may have a wide range of interstate, State, local or area-wide agency roles to play, the program will be reviewed closely for assurance that it constitutes an organized and unified program. Consistent with this principle, there must be a clear point of responsibility for the program, although program implementation may be undertaken by several State entities. In those cases, where a complex inter-agency and intergovernmental process is established, the State must submit a description of roles and responsibilities of each of the participants and how such roles and responsibilities contribute to a unified coastal zone management program. This description should be sufficiently detailed to demonstrate that a coherent program structure has been proposed by the State and the State is prepared to act in accordance with the objectives of the management program. Although the Act does not prescribe the creation of a central management agency at the State level, it envisions the creation of a coastal zone management entity that has adequate legislative and/or executive authority to implement the policies and requirements mandated in

the Act. Review of the management program for compliance with this requirement will be undertaken as a single review with review of the requirements contained in § 923.31, full participation by interested bodies in adoption of management programs, and § 923.23, designation of a single State agency.

**§ 923.23 Designation of a single agency.**

(a) *Requirement.* In order to fulfill the requirement of Section 306(c) (5), the management program must contain appropriate documentation that the Governor of the coastal State has designated a single agency to be responsible for receiving and administering grants under Section 306 for implementing an approved management program.

(b) *Comment.* Statutory citation: Section 306(c) (5):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the Governor of the State has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

This requirement is closely related to that contained in § 923.22, relating to a description of the organizational structure which will implement the management program. While this requirement is self-explanatory, it should be pointed out that States will undoubtedly come forward with a wide variety of organizational structures to implement approved management programs. Some will probably be quite complex, utilizing a variety of control techniques at a number of governmental levels. Nothing in this part should be construed as limiting the options available to a State for implementing its program. The purpose of the requirement is simply to identify a single agency which will be fiscally and programmatically responsible for receiving and administering the grants under Section 306 to implement the approved management program.

**§ 923.24 Authorities to administer land and water uses, control development and resolve conflicts.**

(a) *Requirement.* (1) The management program must contain documentation by the Governor or his designated legal officer that the agencies and governments chosen by the State to administer the management program have the authority to administer land and water regulations, control development in accordance with the management program and to resolve use conflicts.

(b) *Comment.* Statutory citation: Section 306(d) (1):

Prior to granting approval of the management program, the Secretary shall find that the State, acting through its chosen agency or agencies, including local governments, area-wide agencies designated under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1968, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power . . . to administer land and water use regulations, control development in order to ensure compliance with the management program

and to resolve conflicts among competing uses . . . .

This requirement shall be reviewed in close conjunction with that of §§ 923.21, 923.25 and § 923.26, dealing with authorities which the State's organizational structure must possess in order to ensure implementation of the management program. The language of this requirement makes it clear that the State may choose to administer its program using a variety of levels of governments and agencies, but that if it does, the State must have available to it the authorities specified.

**§ 923.25 Authorities for property acquisition.**

(a) *Requirement.* The management program shall contain documentation by the Governor or his designated legal officer that the agency or agencies, including local governments, area-wide agencies, regional or interstate agencies, responsible for implementation of the management program have available the power to acquire fee simple and less than fee simple interests in lands, waters and other property through condemnation or other means where necessary to achieve conformance with the management program. Where the power includes condemnation, the State shall so indicate. Where the power includes other means, the State shall specifically identify such means.

(b) *Comment.* Statutory citation: Section 306(d) (2):

Prior to granting approval of the management program, the Secretary shall find that the State, acting through its chosen agency or agencies, including local governments, area-wide agencies designated under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1968, regional agencies or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power . . . to acquire fee simple and less than fee simple interests in lands, waters and other property through condemnation or other means when necessary to achieve conformance with the management program . . . .

In most cases, it will not be necessary to acquire fee simple ownership. Normally, appropriate use restrictions will be adequate to achieve conformance with the program. In other cases, an easement may be necessary to achieve conformance with the management program. Where acquisition is necessary, this section contemplates acquisition by condemnation or through other means. However, the mere authority to acquire an interest in lands or waters by purchase from a willing vendor will not be sufficient in cases where the acquisition of interests in real property is a necessary and integral part of the program. In such cases, the power of condemnation need be no broader than necessary to achieve conformance with the program. For example, if a State's program includes provisions expressly requiring that power transmission lines and pipelines be located in specified energy and transportation corridors to minimize environmental impact, and for State ac-

quisition of such transportation corridors, then the State should have the power to acquire corridors for such purposes through condemnation. It is not necessary that the power to acquire real property be held by any one particular agency involved in implementing the management program. The authority must, however, be held by one or more agencies or local governments with a statutory responsibility to exercise the authority without undue delay when necessary to achieve conformance with the management program.

**§ 923.26 Techniques for control of land and water uses.**

(a) *Requirement.* The management program must contain documentation by the Governor or his designated legal officer that all existing, projected and potential land and water uses within the coastal zone may be controlled by any one or a combination of the techniques specified in Section 306(e) (1).

(b) *Comment.* Statutory citation: Section 306(e) (1):

Prior to granting approval, the Secretary shall find that the program provides . . . for any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

(1) Section 306(e) (1) (A) "State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance." This option requires the State to establish general criteria and standards within the framework of the coastal zone program for implementation by local government. Such criteria and standards would provide for application of criteria and standards to specific local conditions. Implementation by a local unit of government would consist of adoption of a suitable local zoning ordinance or regulation, and enforcement on a continuing basis. Administrative review at the State level requires provision for review of local ordinances and regulations and local enforcement activity for consistency with the criteria and standards as well as programs, not review of specific cases on the merits. In the event of deficiencies either in regulation or local enforcement, State enforcement of compliance would require either appropriate changes in local regulation or enforcement or direct State intervention.

(2) Section 306(e) (1) (B) "Direct State land and water use planning and regulation." Under this option the State would become directly involved in the establishment of detailed land and water use regulations and would apply these regulations to individual cases. Initial determinations regarding land and water use in the coastal zone would be made at the State level. This option preempts the traditional role of local government in the zoning process involving lands or waters within the coastal zone.

(3) Section 306(e) (1) (C) "State administrative review for consistency with the management program of all develop-

ment plans, projects, or land and water regulations, including exceptions and variances thereto proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings." This option leaves the local unit of government free to adopt zoning ordinances or regulations without State criteria and standards other than the program itself, but subjects certain actions by the local unit of government to automatic State review, including public notice and a hearing when requested by a party. Such actions include:

(i) Adoption of land and water use regulations, ordinarily in the form of a zoning ordinance or regulation.

(ii) Granting of an exception or variance to a zoning ordinance or regulation.

(iii) Approval of a development plan or project proposed by a private developer. This may be defined to exclude approval of minor projects, such as small residences or commercial establishments, or those which do not have a significant impact.

(4) It should be noted that State review is for consistency with the management program, not of the merits or of the facts on which the local decision is based.

(5) The State may choose to utilize only one of the specified techniques, or more than one, or a combination of them in different locations or at different times. Within the parameters set forth in the requirement, there is a large variety of tools which the management program could adopt for controlling land and water uses. The program should identify the techniques for control of land and water uses which it intends to use for existing, projected and potential uses within the coastal zone. This requirement will be reviewed in close conjunction with those contained in §§ 923.21, 923.24 and 923.25, dealing with State authorities to implement the management program.

**Subpart D—Coordination**

**§ 923.30 General.**

One of the most critical aspects of the development of State coastal zone management programs will be the ability of the States to deal fully with the network of public, quasi-public and private bodies which can assist in the development process and which may be significantly impacted by the implementation of the program. Each State will have to develop its own methods for accommodating, as appropriate, the varying, often conflicting interests of local governments, water and air pollution control agencies, regional agencies, other State agencies and bodies, interstate organizations, commissions and compacts, the Federal government and interested private bodies. It is the intent of these requirements for coordination with governmental and private bodies to assure that the State, in developing its management program, is aware of the full array of interests represented by such organizations, that opportunity for participation was provided, and that adequate con-

sultation and cooperation with such bodies has taken place and will continue in the future.

**§ 923.31 Full participation by relevant bodies in the adoption of management programs.**

(a) *Requirement.* In order to fulfill the requirement contained in section 306(c) (1), the management program must show evidence that:

(1) The management program has been formally adopted in accordance with State law or, in its absence, administrative regulations;

(2) The State has notified and provided an opportunity for full participation in the development of its management program to all public and private agencies and organizations which are liable to be affected by, or may have a direct interest in, the management program. The submission of the management program shall be accompanied by a list identifying the agencies and organizations referred to in paragraph (a) (2) of this section, the nature of their interest, and the opportunities afforded such agencies and organizations to participate in the development of the management program. These organizations should include those identified pursuant to § 923.32, which have developed local, areawide or interstate plans applicable to an area within the coastal zone of the State as of January 1 of the year in which the management program is submitted for approval; and

(3) The management program will carry out the policies enumerated in section 303 of the Act.

(b) *Comment.* Statutory citation: Section 306(c) (1):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . (t) he State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

This requirement embodies the actual approval by the Secretary of Commerce of a State's coastal zone management program pursuant to all of the terms of the Act, plus associated administrative rules and regulations. As the operative section, it subsumes all of the requirements included in this part, which shall be considered the "rules and regulations promulgated by the Secretary" mentioned in section 306(c) (1). The citation, however, also includes some specific additional requirements, for which guidance and performance criteria are necessary. These additional requirements include:

(1) Adoption of the management program by the State. The management program must demonstrate that it represents the official policy and objectives of the State. In general, this will require

documentation in the management program that the State management entity has formally adopted the management program in accordance with either the rules and procedures established by statute, or in the absence of such law, administrative regulations.

(2) Opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, public and private. A major thrust of the Act is its concern for full participation and cooperation in the development and implementation of management programs by all interested and affected parties, organizations and individuals. This is specifically included in the statement of national policy in section 303(c). The State must provide evidence that the listed agencies and parties were, in fact, provided with an opportunity for full participation. It will be left to the States to determine the method and form of such evidence, but should contain at a minimum:

(i) A listing, as comprehensive as possible, of all Federal and State agencies, local governments, regional organizations, port authorities and public and private organizations which are likely to be affected by, or have a direct interest in, the development and implementation of a management program (including those identified in § 923.32), and

(ii) A listing of the specific interests of such organizations in the development of the management program, as well as an identification of the efforts made to involve such bodies in the development process.

(c) "Opportunity for full participation" is interpreted as requiring participation at all appropriate stages of management program development. The assistance which can be provided by these public and private organizations can often be significant, and therefore contact with them should be viewed not only as a requirement for approval, but as an opportunity for tapping available sources of information for program development. Early and continuing contact with these agencies and organizations is both desirable and necessary. In many cases it may be difficult or impossible to identify all interested parties early in the development of the State's program. However, the public hearing requirement of § 923.41 should afford an opportunity to participate to interested persons and organizations whose interest was not initially noted.

(3) Consistency with the policy declared in section 303 of the Act. In order to facilitate this review, the State's management program must indicate specifically how the program will carry out the policies enumerated in section 303.

#### § 923.32 Consultation and coordination with other planning.

(a) *Requirement.* In order to fulfill the requirements contained in section 306(c) (2), the management program must include:

(1) An identification of those entities mentioned which have plans in effect on January 1 of the year submitted,

(2) A listing of the specific contacts made with all such entities in order to coordinate the management program with their plans.

(3) An identification of the conflicts with those plans which have not been resolved through coordination, and continuing actions contemplated to attempt to resolve them, and

(4) Indication that a regular consultative mechanism has been established and is active, to undertake coordination between the single State agency designated pursuant to § 923.23, and the entities in paragraph (B) of Section 306(c) (2).

(b) *Comment.* Statutory citation: Section 306(c) (2):

"Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find \* \* \* that the State has:

(A) Coordinated its program with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

(B) Established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title."

Relevant background information on this requirement appears in 15 CFR 920.45(f), and is incorporated by reference herein. While the State will exercise its authority over land and water uses of Statewide significance in the coastal zone by one or more of the techniques set forth in § 923.28, the State management program must be coordinated with existing plans applicable to portions of the coastal zone. It should be noted that this section does not demand compliance of the State program with local plans, but the process envisioned should enable a State not only to avoid conflicts and ambiguities among plans and proposals, but to draw upon the planning capabilities of a wide variety of governments and agencies. Coordination implies a high degree of cooperation and consultation among agencies, as well as a mutual willingness on the part of the participants to accommodate their activities to the needs of the others in order to carry out the public interest. Perceptions of the public good will differ and it is recognized that not all real or potential conflicts can be resolved by this process. Nevertheless, it is a necessary step. Effective cooperation and consultation must continue as the management program is put into operation so that local governments, interstate, regional and areawide agencies can continue to participate in the carrying out of the management program. The "plans" referred to in (A) shall be considered those which have been officially adopted by the entity which developed

them, or which are commonly recognized by the entity as a guide for action. The list of relevant agencies required under § 923.31 will be of use in meeting this requirement. It will enable the State to identify those entities mentioned in (A) which have such plans and to provide evidence that coordination with them has taken place. The process envisioned should not only enable a State to avoid conflicts between its program and other plans applying within its coastal zone, but to draw upon the planning capabilities of a wide variety of local governments and other agencies. In developing and implementing those portions of the program dealing with power transmission lines, pipelines, interstate transportation facilities and other facilities which will significantly impact on neighboring States of a region, particular attention should be paid to the requirements of this section.

#### Subpart E—Miscellaneous

##### § 923.40 General.

The requirements in this subpart do not fall readily into any of the above categories but deal with several important elements of an approvable management program. They deal with public hearings in development of the management program, gubernatorial review and approval, segmentation of State programs and applicability of water and air pollution control requirements.

##### § 923.41 Public hearings.

(a) *Requirements.* In order to fulfill the requirement contained in section 306(c) (3), the management program must show evidence that the State has held public hearings during the development of the management program following not less than 30 days notification, that all documents associated with the hearings are conveniently available to the public for review and study at least 30 days prior to the hearing, that the hearings are held in places and at times convenient to affected populations, that all citizens of the State have an opportunity to comment on the total management program and that a report on each hearing be prepared and made available to the public within 45 days.

(b) *Comment.* Statutory citation: Section 306(c) (3):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that \* \* \* (4) the State has held public hearings on the development of the management program

Extensive discussion and statements of policy regarding this requirement appears in §§ 920.30, 920.31 and 920.32, which is incorporated herein by reference.

##### § 923.42 Gubernatorial review and approval.

(a) *Requirement.* In order to fulfill the requirement contained in section 306(c) (4), the management program must contain a certification signed by the Governor of the coastal State to the effect that he has reviewed and approved the management program and any amendments thereto. Certification may be omitted in



the case of a program submitted for preliminary approval.

(b) *Comment.* Statutory citation: Section 306(c) (4):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the management program and any changes thereto have been reviewed and approved by the Governor.

This requirement is self-explanatory.

§ 923.43 Segmentation.

(a) *Requirement.* If the State intends to develop and adopt its management program in two or more segments, it shall advise the Secretary as early as practicable stating the reasons why segmentation is appropriate and requesting his approval. Each segment of a management program developed by segments must show evidence (1) that the State will exercise policy control over each of the segmented management programs prior to, and following their integration into a complete State management program, such evidence to include completion of the requirements of § 923.11 (Boundaries of the coastal zone) and § 923.15 (National interest in the siting of facilities) for the State's entire coastal zone, (2) that the segment submitted for approval includes a geographic area on both sides of the coastal land-water interface, and (3) that a timetable and budget have been established for the timely completion of the remaining segments or segment.

(b) *Comment.* Statutory citation: Section 306(h):

At the discretion of the State and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided*, That, the State adequately provides for the ultimate coordination of the various segments of the management program into a single, unified program, and that the unified program will be completed as soon as reasonably practicable.

(1) This section of the Act reflects a recognition that it may be desirable for a State to develop and adopt its management program in segments rather than all at once because of a relatively long coastline, developmental pressures or public support in specific areas, or earlier regional management programs developed and adopted. It is important to note, however, that the ultimate objective of segmentation is completion of a management program for the coastal zone of the entire State in a timely fashion. Segmentation is at the State's option, but requires the approval of the Secretary. States should notify the Secretary at as early a date as possible regarding intention to prepare a management program in segments.

(2) Continuing involvement at the State as well as local level in the development and implementation of segmented programs is essential. This emphasis on State participation and coordination with the program as a whole should be reflected in the individual seg-

ments of a management program. Regional agencies and local governments may play a large role in developing and carrying out such segmented programs, but there must be a continuing State voice throughout this process. This State involvement shall be expressed in the first segment of the management program in the form of evidence that (i) the boundaries of the coastal zone for the entire State have been defined (pursuant to § 923.11) and (ii) there has been adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature (pursuant to § 923.15) for the State's entire coastal zone. These requirements are designed to assure that the development of a Statewide coastal zone management program proceeds in an orderly fashion and that segmented programs reflect accurately the needs and capabilities of the State's entire coastal zone which are represented in that particular segment.

(3) The Act's intent of encouraging and assisting State governments to develop a comprehensive program for the control of land and water uses in the coastal zone is clear. This intent should therefore apply to segments as well, and segmented management programs should be comprehensive in nature and deal with the relationship between and among land and water uses. No absolute minimum or maximum geographic size limitations will be established for the area of coverage of a segment. On the one hand, segments should include an area large enough to permit comprehensive analyses of the attributes and limitations of coastal resources within the segment of State needs for the utilization or protection of these resources and of the interrelationships of such utilizations. On the other hand, it is not contemplated that a segmented management program will be developed solely for the purpose of protecting or controlling a single coastal resource or use, however desirable that may be.

(4) One of the distinguishing features of a coastal zone management program is its recognition of the relationship between land uses and their effect upon coastal waters, and vice versa. Segments should likewise recognize this relationship between land and water by including at least the dividing line between them, plus the lands or waters on either side which are mutually affected. In the case of a segment which is predominantly land, the boundaries shall include those waters which are directly and significantly impacted by land uses in the segment. Where the predominant part of the segment is water, the boundaries shall include the adjacent shorelands strongly influenced by the waters, including at least transitional and inter-tidal areas, salt marshes, wetlands and beaches (or similar such areas in Great Lake States).

(5) Segmented management programs submitted for approval will be reviewed and approved in exactly the same manner as programs for complete coastal zones, utilizing the same approval criteria, plus those of this section.

§ 923.44 Applicability of air and water pollution control requirements.

(a) *Requirement.* In order to fulfill the requirements contained in Section 307(f) of the Act the management program must be developed in close coordination with the planning and regulatory systems being implemented under the Federal Water Pollution Control Act and Clean Air Act, as amended, and be consistent with applicable State or Federal water and air pollution control standards in the coastal zone. Documentation by the official or officials responsible for State implementation of air and water pollution control activities that these requirements have been incorporated into the body of the coastal zone management program should accompany submission of the management program.

(b) *Comment.* Statutory citation: Section 307(f):

Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal government, or any State or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title, and shall be the water pollution control requirements and air pollution control requirements applicable to such program.

(1) The basic purpose of this requirement is to ensure that the management program does not conflict with the national and State policies, plans and regulations mandated by the Federal Water Pollution Control Act, as amended, and the Clean Air Act as amended. The policies and standards adopted pursuant to these Acts should be considered essential baselines against which the overall management program is developed. This is a specific statutory requirement that reflects the overall coastal zone management objective of unified state management of environmental laws, regulations and applicable standards. To this end, management programs should provide for continuing coordination and cooperation with air and water programs during subsequent administration of the approved management program.

(2) There are also significant opportunities for developing working relationships between air and water quality agencies and coastal zone management programs. These opportunities include such activities as joint development of Section 208 areawide waste treatment management planning and coastal zone management programs; consolidation and/or incorporation of various planning and regulatory elements into these closely related programs; coordination of monitoring and evaluation activities; increased management attention being accorded specifically to the coastal waters; consultation concerning the desirability of adjusting state water quality standards and criteria to complement coastal zone management policies; and designation of areas of particular concern or priority uses.

## Subpart F—Applications for Administrative Grants

### § 923.50 General.

The primary purpose of administrative grants made under section 306 of the Act is to assist the States to implement coastal zone management programs following their approval by the Secretary of Commerce. The purpose of these guidelines is to define clearly the processes by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with the Grants Management Manual for Grants under the Coastal Zone Management Act, hereinafter referred to as the "Manual." This Manual contains procedures and guidelines for the administration of all grants covered under the Coastal Zone Management Act of 1972. It has been designed as a tool for grantees, although it addresses the responsibilities of the National Oceanic and Atmospheric Administration and its Office of Coastal Zone Management, which is responsible for administering programs under the Act. The Manual incorporates a wide range of

federal requirements, including those established by the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office and the Department of Commerce. In addition to specific policy requirements of these agencies, the Manual includes recommended policies and procedures for grantees to use in submitting a grant application. Inclusion of recommended policies and procedures for grantees does not limit the choice of grantees in selecting those most useful and applicable to local requirements and conditions.

### § 923.51 Administration of the program.

The Congress assigned the responsibility for the administration of the Coastal Zone Management Act of 1972 to the Secretary of Commerce, who has designated the National Oceanic and Atmospheric Administration (NOAA) as the agency in the Department of Commerce to manage the program. NOAA has established the Office of Coastal Zone Management for this purpose. Requests for information on grant applications and the applications themselves should be directed to:

Director, Office of Coastal Zone Management (OCZM)  
National Oceanic and Atmospheric Administration,  
U.S. Department of Commerce  
Rockville, Maryland 20853

### § 923.52 State responsibility.

(a) The application shall contain a designation by the Governor of a coastal State of a single agency to receive and have fiscal and programmatic responsibility for administering grants to implement the approved management program.

(b) A single State application will cover all program management elements, whether carried out by State agencies, areawide/regional agencies, local governments, interstate or other entities.

### § 923.53 Allocation.

Section 306(f) allows a State to allocate a portion of its administrative grant to sub-State or multi-State entities if the work to result from the allocation contributes to the effective implementation of the State's approved coastal zone management program. The requirements for identifying such allocations are set forth in § 923.55(e).

### § 923.54 Geographical segmentation.

Authority is provided in the Act for a State's management program to be developed and adopted in segments. Additional criteria for the approval of a segmented management program are set forth in Subpart E § 923.43. Application procedures for an administrative grant to assist in administering an approved segmented management program will be the same as set forth in this subpart for applications to administer an approved management program for the entire coastal zone of a State.

### § 923.55 Application for the initial administrative grant.

(a) The Form CD-288, Preapplication for Federal Assistance, required only for the initial grant, must be submitted 120 days prior to the beginning date of the requested grant. The preapplication shall include documentation, signed by the Governor, designating the State office, agency or entity to apply for and administer the grant. Copies of the approved management program are not required. The preapplication form may be submitted prior to the Secretary's approval of the applicant's management program provided, after consultation with OCZM, approval is anticipated within 60 days of submittal of the preapplication.

(b) All applications are subject to the provisions of OMB Circular A-95 (revised). The Form CD-288, Preapplication for Federal Assistance, will be transmitted to the appropriate clearinghouses at the time it is submitted to the Office of Coastal Zone Management (OCZM). If the application is determined to be Statewide or broader in nature, a statement to that effect shall be attached to the Preapplication form submitted to OCZM. Such a determination does not preclude the State clearinghouse from involving areawide clearinghouses in the review. In any event, whether the application is considered to be Statewide or not, the Preapplication form shall include an attachment indicating the date copies of the Preapplication form were transmitted to the State clearinghouse and if applicable, the identity of the areawide clearinghouse(s) receiving copies of the Preapplication form and the date(s) transmitted. The Preapplication form may be used to meet the project notification and review requirements of OMB Circular A-95 with the concurrence of the appropriate clearinghouses. In the absence of such concurrence the project notification and review procedures, established State and areawide clearinghouses, should be implemented simul-

taneously with the distribution of the preapplication form.

(c) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. The allowability of costs will be determined in accordance with the provisions of FMC 74-4. Administrative grants made under section 306(a) of the Act are clearly intended to assist the States in administering their approved management programs. Such intent precludes tasks and related costs for long range research and studies. Nevertheless it is recognized that the coastal zone and its management is a dynamic and evolving process wherein experience may reveal the need for specially focused, short-term studies, leading to improved management processes and techniques. The OCZM will consider such tasks and their costs, based upon demonstrated need and expected contribution to more effective management programs.

(d) The Form CD-292, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted 60 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. The OCZM will not accept applications substantially deficient in adherence to A-95 requirements.

(e) The State's work program implementing the approved management program is to be set forth in Part IV, Program Narrative, of the Form CD-292 and must describe the work to be accomplished during the grant period. The work program should include:

(1) An identification of those elements of the approved management program that are to be supported all or in part by the grant and the matching share, hereinafter called the grant project. In any event, activities related to the establishment and implementation of State responsibilities pursuant to Section 307 (c) (3) and Section 307(d) of the Act, are to be included in the grant project.

(2) A precise statement of the major tasks required to implement each element.

(3) For each task, the following should be specified:

(i) A concise statement of how each task will accomplish all or part of the program element to which it is related. Identify any other State, areawide, regional or interstate agencies or local governments that will be allocated responsibility for carrying out all or portions of the task. Indicate the estimated cost of the subcontract/grant for each allocation.

(ii) For each task indicate the estimated total cost. Also indicate the estimated total man-months, if any, allocated to the task from the applicant's in-house staff.

(iii) For each task, list the estimated cost using the object class categories 6.a. through k., Part III, Section B—Budget Categories of Form CD-292.

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(4) The sum of all the task costs in sub-paragraph (3) of this paragraph should equal the total estimated grant project costs.

(5) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's in-house staff, that will be assigned to the grant project. Additionally indicate the number assigned full time and the number assigned less than full time in the two categories.

(6) An identification of those management program elements, if any, that will not be supported by the grant project, and how they will be implemented.

### § 923.56 Approval of applications.

(a) The application for an administrative grant of any coastal State with a management program approved by the Secretary of Commerce, which complies with the policies and requirements of the Act and these guidelines, shall be approved by OCZM, assuming available funding.

(b) Should an application be found deficient, OCZM will notify the applicant in writing, setting forth in detail the manner in which the application fails to conform to the requirements of the Act or this subpart. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) OCZM may, upon finding of extenuating circumstances relating to applications for assistance, waive appropriate administrative requirements contained herein.

### § 923.57 Amendments.

Amendments to an approved application must be submitted to, and approved by, the Secretary prior to initiation of the change contemplated. Requests for substantial changes should be discussed with OCZM well in advance. It is recognized that, while all amendments must be approved by OCZM, most such requests will be relatively minor in scope; therefore, approval may be presumed for minor amendments if the State has not been notified of objections within 30 working days of date of postmark of the request.

### § 923.58 Applications for second and subsequent year grants.

(a) Second and subsequent year applications will follow the procedures set forth in this subpart, with the following exceptions:

(1) The preapplication form may be used at the option of the applicant. If used, the procedures set forth in § 923.55 (b) will be followed and the preapplication is to be submitted 120 days prior to the beginning date of the requested grant. If the preapplication form is not used, the A-95 project notification and review procedures established by State and areawide clearinghouses should be followed.

(2) The application must contain a statement by the Governor of the coastal State or his designee that the management program as approved earlier by the

Secretary of Commerce, with any approved amendments, is operative and has not been materially altered. This statement will provide the basis for an annual OCZM certification that the approved management program remains in effect, thus fulfilling, in part, the requirements of section 309(a) for a continuing review of management programs.

(3) The Governor's document designating the applicant agency is not required, unless there has been a change of designation.

(4) Copies of the approved management program or approved amendments thereto are not required.

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APPENDIX B.  
State Agencies

DEPARTMENT OF NATURAL RESOURCES

(GENERAL POWER OF DEPARTMENT)

1) Creation of the Authority-Section 1501.01-Article II, Section 36 to the Constitution of the State of Ohio.

2) General Powers and Duties-Section 1501.01-Director shall formulate and institute all programs as carried on by the Department. Section 1501.16-The Director may propose for establishment as a wild, scenic or recreation river area a part or parts of any watercourse in this state with adjacent lands which in his judgment possess water conservation wild life or historic values. Section 1501.20-The Ohio Soil and Water Conservation Commission shall recommend to the Director a procedure for coordinating agricultural pollution abatement and urban sedimentary pollution control. Implementation of this project shall be based on standards for air and water quality as determined by the Director of EPA. Section 1501.04-Within the Department of Natural Resources, there shall be created a Recreation and Resources Commission composed of the Chairman of the Wildlife Council, Chairman of Parks and Recreation Council, Chairman of Waterway Safety Council, Chairman of the Technical Advisory Council on Oil and Gas, Chairman of Forest Advisory Council, Chairman of the Soil and Water Conservation Commission, Chairman of the Natural Areas Council and five (5) other members as appointed by the Governor.

3) Specific Powers

a) Land-Section 1505.07-The Director may with the approval of the Director of The Environmental Protection Agency, Attorney General and Governor permit removal of minerals from the bed of Lake Erie.

b) Water-Section 1501.18-The Director may acquire property for use as a scenic or recreation river.

4) Power to Appropriate--Section 1501.01-The Director may appropriate property with the Governor's consent. Such authority shall be however, exercised by the Director of Administrative Services.

5) Power to Lease, Sell or Promote Development of Land-Section 1501.09-Director may lease public service facilities (as defined in Section 1501.07), such as inns, restaurants, etc. to any person, corporation, etc. or such facilities may be administered by the Division of Parks and Recreation.

6) Exceptions to Powers

7) Rule Making Powers

Other powers of the Department and its legally constituted Divisions are more particularly described in pages immediately following.

DIVISION OF FORESTS AND PRESERVES (ODNR)

1) Creation of the Authority-Section 1503.01

2) General Powers and Duties-Section 1503.04-The Chief of the Division may plant trees and take such measures as are necessary to insure a profitable growth of timber. Section 1503.40-Within the Division there is to be a Forestry Advisory Council which is to advise the Chief on forestry practices.

3) Specific Powers

a) Land-Section 1503.05-The Chief may acquire land for state nurseries. Section 1503.03-The Chief with the approval of the Director of Natural Resources may purchase or acquire any interest in land suitable for forestry purposes.

b) Water

4) Power to Appropriate--No Specific Grant

5) Power to Lease, Sell or Promote Development of Land--Section 1503.03-Chief of the Division may buy, lease or otherwise acquire forest land with the consent of the Director of Natural Resources.

6) Exceptions to Powers

7) Rule Making Powers--Section 1503.01-Chief of the Division promulgates rules for the protection of public forests.

DIVISION OF GEOLOGICAL SURVEY (ODNR)

1) Creation of the Authority-Section 1505.01

2) General Powers and Duties-Section 1505.01-The Division shall collect and study matter pertaining to the origin use and evaluation of raw materials and natural resources, shall make and have available for distribution maps, profiles and geologic sections portraying the geological characteristics and topography of the state. Section 1505.03-The Chief may investigate and report matters relating to geological or mineralogical conditions of the state. Section 1505.04-Any person who drills or digs a well within the state producing gas or liquid excluding water to be used as such, shall keep a log of such activity and report the same to the Chief of the Division.

3) Specific Powers

a) Land-Section 1509.081-After the Chief of the Division of Oil and Gas has determined that a disposal permit should issue for mines or wells, he must transmit copies of the application requesting the right to drill or mine to the Director of EPA and the Chief of Geological Survey. The Chief of the Division of Geological Survey shall likewise approve the application unless he determines that the proposed injection would present an unreasonable risk of loss or damage to valuable mineral resources.

b) Water

4) Power to Appropriate

5) Power to Lease, Sell or Promote Development of Land

6) Exceptions to Powers

7) Rule Making Powers

## SHORE EROSION (ODNR)

- 1) Creation of the Authority--Section 1507.01-The Chief Engineer of the Department of Natural Resources shall act as the erosion agency of the state.
- 2) General Powers and Duties--Section 1507.01-The Chief Engineer shall cooperate with the Beach Erosion Board of the Department of Defense in carrying out investigations and studies of present conditions along the main shorelines of Lake Erie and of the bays and projections therefrom, within the territorial waters of the state, with a view to perfecting methods for preventing and correcting shore erosion, damages therefrom, and to prevent inundation of improved property by the waters of Lake Erie. Section 1507.05-Chief Engineer may enter into agreements with counties, municipal corporations and other political subdivisions for the purpose of preventing and arresting erosion on the south shore of Lake Erie and water courses flowing into the Lake.
- 3) Specific Powers
  - a) Land--Section 1507.03-No person shall construct an erosion retarding structure on Lake Erie without first submitting plans to the Chief Engineer.
  - b) Water
- 4)1 Power to Appropriate--Section 1507.052-The state or any county, township, municipal corporation which acts as a contracting agency under Section 1507.051 to prevent, correct, or arrest erosion along the south shore of Lake Erie, in any rivers which are connected with Lake Erie and bays connected with said Lake, may appropriate land.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions of Rules-33 U.S.C.A. Section 401-Approval of Chief of Engineers and Secretary of the Army is required before construction of any bridge, dam etc. in or over navigable water, may be commenced.
- 7) Rule Making Powers



DIVISION OF OIL AND GAS (ODNR)

- 1) Creation of the Authority-Section 1509.02
- 2) General Powers and Duties-Section 1509.06-Chief of the Division is to consider applications for permits allowing the drilling of a new well, deepening of an existing well, reopening a well, plugging back a well to a different source of supply or using a well for injection of a liquid. Section 1509.05-No person shall drill a new well, etc. without first having obtained a permit from the Chief of the Division. Section 1509.081-The Chief in determining whether or not to issue a permit under 1509.06, shall consider whether or not an unreasonable risk of waste or contamination to oil or gas in the earth will result. If he determines that such risks would occur he shall reject the application, but if he decides that such risk will not occur, he shall transmit copies of the application to the Director of EPA, Chief of the Division of Geological Survey and Chief of the Division of Mines. Section 4153.111-No person shall locate a mine opening within 300 feet of any well which produces oil and gas unless he first obtains permission from Chief of the Division. Section 1509.10-Oil drilling log must be filed with the Chief of the Division within 30 days after the completion of the well.
- 3) Specific Powers
  - a) Land
  - b) Water--Section 1509.06-No Persons shall use a well for injection of a liquid unless authorized by a permit issued by the Chief of the Division. Section 1509.22-No person shall contaminate surface or underground waters with substances produced in connection with drilling oil or gas wells.
- 4) Power to Appropriate--No Specific Grant of Power.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 1509.39-A municipal corporation may enact ordinances regulating health and safety standards for the drilling and exploration of oil and gas, provided that such regulations are not less restrictive than rules set forth by the Chief of the Division.
- 7) Rule Making Powers--Section 1509.03-Chief of the Division shall make rules and regulations for administration, implementation and enforcement of Chapter 1509. Section 1509.04-Inspectors may enforce the rules as promulgated by the Chief of the Division. Section 1509.22-Chief of the Division shall adopt the rules to prevent contamination of surface or underground waters caused by drilling or producing of oil and gas.

DIVISION OF LANDS AND SOIL (ODNR)

- 1) Creation of the Authority-Section 1511.01.
- 2) General Powers and Duties-Section 1511.01-The Division furnishes aid and equipment to Soil and Water Conservation Districts, makes recommendations to the Department of Natural Resources on matters concerning soil conservation and proper land use, and considers policies affecting state land or land in the custody of Historical Society and the Divisions of Forests, Reclamation, Wild Life, Department of the Administrative Service, Transportation, etc.
- 3) Specific Powers
  - a) Land-Section 1511.02-The Division shall study state owned lands to determine suitability for parks, forests, recreational or wild life preserves. The study shall include lakes and rivers suitable for recreational purposes or for the conservation and natural propagation of wild life.
  - b) Water
- 4) Power to Appropriate-No specific grant of power.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers

DIVISION OF RECLAMATION (ODMR)

- 1) Creation of the Authority--Section 1513.02, Section 1514.01 and Section 1513.02-A Reclamation Board of Review is to be appointed by the Governor with advice and consent of the Senate.
- 2) General Powers and Duties--The Chief of the Division shall reclaim lands effected by strip mining, replace top soil, backgrading etc. Section 1513.07-No operator shall engage in strip mining or conduct a strip mining operation without a license issued by the Chief of the Division of Reclamation. Section 1514.02-Not later than July 1, 1977 nor earlier than July 1, 1975, no operator shall engage in surface mining of minerals or conduct a surface mining operation without a permit issued by the Chief of the Division. Section 1514.03-Any operator, shall within thirty days after the anniversary date of the issuance of a permit, submit a progress report to the Chief stating, the amount of minerals removed etc.
- 3) Specific Powers
  - a) Land-Section 1513.02-Chief of the Division may by rule designate as unsuitable for strip mining, areas maintained by the Department of Natural Resources as wild, scenic or recreational rivers, publicly owned or dedicated parks, and other areas of unique and irreplaceable natural beauty or condition. Section 1513.20-Chief of the Division may with the approval of the Director of Natural Resources purchase any eroded land including land affected by strip mining.
  - b) Water
- 4) Power to Appropriate-No Specific Grant
- 5) Power to Lease, Sell or Promote Development of Land-Section 1513.25-After completion of reclamation, Chief with approval of Attorney General and Director of Natural Resources may sell or lease such tracts when same is advantageous to the state.
- 6) Exceptions to Powers
- 7) Rule Making Powers-Section 1513.02-The Chief is to adopt and amend rules and regulations providing for the implementation of 1513. Section 1513.05-The Reclamation Board of Review may for its own internal management adopt regulations which do not affect private rights. Section 1514.03-The Chief of the Division may by rule adopt procedures for the submission of permits. The Chief may set up classifications of mining industries so as to prevent damage to adjoining property.

THE SOIL & WATER CONSERVATION COMMITTEE (ODNR)

- 1) Creation of the Authority-Section 1515.02.
- 2) General Powers and Duties-Section 1515.02 (A)-The Commission shall have the power to recommend to the Director of the Department of Natural Resources priorities for planning in the construction of small watershed projects and to recommend to the Director, the Governor and the General Assembly programs and legislation with the respect to the operations of Soil and Water Conservation Districts which will encourage proper soil, water and natural resource management. Section 1515.03-The Commission oversees Creation of Soil and Water Conservation Districts.
- 3) Specific Powers
  - a) Land-Section 1515.02 (A)-The Committee determines the distribution of funds to conservancy districts.
  - b) Water-Section 1515.02 (A)-The Committee determines the distribution of funds to conservancy districts.
- 4) Power to Appropriate-No specific grant.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers-Section 1515.02-The Committee may adopt rules and regulations for the implementation of Chapter 1515.

## NATURE PRESERVES

- 1) Creation of the Authority--Section 1517.02--The Department of Natural Resources shall in consultation with the Ohio Natural Areas Council administer a system of nature preserves.
- 2) General Powers and Duties--Section 1517.02--The Department of Natural Resources shall administer a system of nature preserves, formulate policies for the protection, registration, dedication of preserves and maintain surveys and inventories of natural areas and habitats of rare and endangered species of plants and animals. Section 1517.03--Ohio Natural Areas Council advises the Director on the administration of natural preserves. Section 1517.04--The Council recommends areas for acquisition and promulgates regulations for use.
- 3) Specific Powers
  - a) Land--Section 1517.05--The Director may accept by gift, purchase etc. lands dedicated for a nature preserve and may limit land uses.
  - b) Water
- 4) Power to Appropriate--No Specific Grant
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers--Section 1517.06--Land dedicated pursuant to Chapter 1517 shall not be appropriated without a finding of imperative and unavoidable public necessity and with the approval of the Governor.
- 7) Rule Making Powers--Section 1517.02--The Department of Natural Resources shall adopt rules and regulations for the visitation and protection of nature preserves.

## RECREATIONAL TRAILS

- 1) Creation of the Authority-Section 1519.01
- 2) General Powers and Duties--Section 1519.01-The Director of Natural Resources shall plan and administer a state system of recreational trails for hiking, horseback riding and other non-motorized forms of recreational travel.
- 3) Specific Powers
  - a) Land-Section 1519.02-The Director of Natural Resources may acquire real property for the purpose of establishing, protecting and maintaining any state recreational trail.
  - b) Water
- 4) Power to Appropriate-Section 1519.02-The Director may appropriate real property or any estate, right or interest therein for trail purposes, only along a canal, watercourse, stream, highway, logging road, etc., particularly suited for non-motorized vehicle recreational use and may not appropriate more than 25 acres along any one mile of trail.
- 5) Power to Lease, Sell or Promote Development of Land-The Director shall through the Chief of the Division of Parks & Recreation, prepare an inventory of trails and other scenic corridors for recreational use. Before January 1, 1975, the Director shall prepare a comprehensive plan for development of a statewide trail system to serve present and future trail recreation needs of the state.
- 6) Exceptions to Powers-Section 1519.02-The Director may not appropriate more than 25 acres of land along any one (1) mile of trail.
- 7) Rule Making Powers-Section 1519.01-The Director may adopt rules and regulations to restrict uses to the trails, to insure users safety, prevent damage to the trail routes and prevent conflicting uses.

## THE DIVISION OF WATER (ODNR)

1) Creation of the Authority-Section 1521.02 and Section 1523.01-Powers under this Section are to be exercised by the Chief of the Division of Water.

2) General Powers and Duties-Section 1521.03-The Division of water shall assist in an advisory capacity any properly constituted major River Watershed District, Conservancy District, Soil Conservation District or other government agency of the state in the planning of works for ground water recharge. The Division also has authority to make investigations and studies of factors relating to floods and flood control in the state. Section 1521.06-No dam may be constructed in a watercourse for the purpose of storing or retarding water nor shall any dike or levy be constructed for the purpose of diverting or retaining flood water unless a construction permit has been issued by the Chief of the Division of Water. Section 1521.03-The Division of Water shall cooperate with the United States or any agency thereof in planning and constructing flood control works. Section 1523.01-The Chief of the Division, when in his judgment it is for the public welfare and best interests of the citizens of this state that surplus flood and other waters of any watershed be conserved and impounded, he shall construct such reservoirs, dams, storage basins and other improvements as are necessary or he may make additions to, or enlarge existing facilities.

### 3) Specific Powers

#### a) Land

b) Water-Section 1523.06-The Chief of the Division of Water may enter into agreements for the sale or lease of water power. Section 1523.09-From the reservoir, dam or other improvement constructed by the Chief of the Division constituting a part of the canal system of this state, no water shall be sold or leased, except the water conserved in excess of the quantity required for navigation purposes. Section 1523.19-Chief of the Division is to maintain all dams and reservoirs and works constructed under this Section.

4) Power to Appropriate-Section 1523.01-Chief may appropriate such private lands necessary to enlarge dams and reservoirs. Section 1523.11 and Section 1523.20. Section 1523.01-Chief may appropriate private property for the construction of dams etc., with the approval of the director.

5) Power to Lease, Sell or Promote Development of Land-Section 1523.06-Chief may sell or lease water or power derived from water.

6) Exceptions to Powers-Section 1523.09-Chief may not lease or sell water which feeds into the state canal system except he may sell that excess of the quantity which is at all times required for navigation purposes. Section 1523.12-Chief may not reduce quantity or quality of water in any stream if a political subdivision is using it for water supplies for its inhabitants.

THE DIVISION OF WATER (ODNR)  
continued

6) Exceptions to Powers-Section 1523.13-When a subdivision's water supply is reduced or impaired in the judgment of the Chief, water may be taken from an improvement before an industrial lessee may do so.

7) Rule Making Powers



DIVISION OF WILDLIFE (ODNR)

1) Creation of the Authority

2) General Powers and Duties-1531.04-The Division of Wildlife shall develop policies and programs with the approval of the Director of Natural Resources, take the general care of and protect wildlife in state parks, enforce its orders for the protection and management of wild animals and sanctuaries. Section 1531.07-Chief of the Division enforces laws to protect the wildlife on state owned parks and lands. Section 1531.08-In conformity with Section 36 of Article 2 of the Ohio Constitution, providing for the passage of laws for the conservation of the natural resources of the state including streams, lakes, submerged lands and swamp lands, the Chief of the Division of Wildlife has authority and control in matters pertaining to the protection, possession and management of wild animals.

3) Specific Powers

a) Land-Section 1531.06-The Chief of the Division with the approval of the director may acquire by lease, purchase or otherwise lands and waters for wild animals, fish or game management. Section 1531.29-No person shall place or dispose of in any manner, any garbage, etc. in any state owned, controlled or administered land or in any ditch, stream, river, lake, pond or any water course.

b) Water-Section 1531.06-Chief, with the approval of the Director, may acquire land, water and surface rights thereupon, for wild animals. Section 1531.29-No persons shall pollute any state owned ditch, stream, river, lake, pond etc.

4) Power to Appropriate--No Specific Grant.

5) Power to Lease, Sell or Promote Development of Land

6) Exceptions to Powers-Section 1531.12--Chief has no authority to change penalties for violations of law.

7) Rule Making Powers-Section 1531.25-Chief, by rule may restrict the taking of animals threatened with statewide extinction.

DIVISION OF PARKS AND RECREATION (ODNR)

- 1) Creation of the Authority-Section 1541.01.
- 2) General Powers and Duties-Section 1541.01-The Chief of the Division of Parks and Recreation with the approval of the Director of Natural Resources shall determine policies and programs for the Division. Section 1541.03-All lands and waters dedicated and set apart for state park purposes shall be under the control and management of the Division of Parks and Recreation which shall protect, maintain and keep them in repair. Section 1541.01-The Division shall create, maintain and operate a state park system. Section 1541.03-The Division shall have the power to construct, maintain dikes, wharves, landings, docks, dams and other works on land set apart for state park purposes. Section 1541.40-An Ohio Parks and Recreation Council shall be created within the Division of Parks and Recreation and shall have the duties of advising the Chief on recreational policies, appraising state parks and recreational needs, recommending to the Chief programs for Division of Parks including acquisitions of lands.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate-No specific grant.
- 5) Power to Lease, Sell or Promote Development of Land-Section 1541.08-The Division may lease lands under their control upon approval by the Attorney General. Section 1541.083-Chief with approval of Director of Natural Resources, Attorney General and Governor may make leases allowing removal of halite from beneath Headlands State Park. Section 1541.081-Chief may sell lands not needed for public use.
- 6) Exceptions to Powers
- 7) Rule Making Powers-Section 1541.03-Chief may adopt rules governing all advertising in state parks.

DIVISION OF WATER CRAFT (ODHR)

- 1) Creation of the Authority-Section 1547.51
- 2) General Powers and Duties-Section 1547.51-The Division of Watercraft shall administer and enforce all laws relative to the identification, numbering, title, use and operation of watercraft operated on the waters of this state.
- 3) Specific Powers
  - a) Land-Section 1547.72-The Division of Watercraft whenever it deems it to be in the best interest of the state and as an aid to lake commerce and navigation, may construct, maintain and operate refuge harbors and other projects for the harboring, mooring and docking and storing of vessels.
  - b) Water-Section 1547.331-No person shall operate a watercraft on Lake Erie which is capable of discharging sewage unless it has a sewage disposal system approved by regulation of the Director of the Environmental Protection Agency.
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 1547.77-Any action taken by the Chief of Division of Watercraft pertaining to harbor projects and refuge facilities shall not be deemed in conflict with certain powers and duties conferred upon and delegated to federal agencies and to municipal corporations and other state agencies under section 7 of Article 18 of the Ohio Constitution.
- 7) Rule Making Powers-Section 1547.52-Chief of the Division adopts all rules and regulations.

ENVIRONMENTAL PROTECTION AGENCY

- 1) Creation of the Authority-Section 3745.01
- 2) General Powers and Duties-Section 1501.20-Implementation of a program of agricultural pollution abatement and urban sedimentary pollution control shall be recommended by the Ohio Soil and Water Conservation Committee to the Director of Natural Resources and shall be conducted in compliance with the standards for air and water quality as determined by the Director of Environmental Protection Agency. Section 1509.081-If the Chief of the Division of Oil and Gas determines that the injection of waste material into a well will not create unreasonable risk, he shall transmit copies of the application for the proposed injection to the Director of Environmental Protection and the Chief of the Division of Geological Survey. The Director of EPA shall approve the application if he determines that the proposed injection will not cause pollution. Section 1541.21-The Director of EPA shall administer Special Sanitary Districts, the area one mile back from any state park, reservoir, canal, or nature preserve. Section 3707.46-The sanitary board, which has control of the maintenance and erection of sanitary plants, must get approval from the Director of the Environmental Protection Agency for each and every proposed modification for the erection and maintenance of said plant. Section 3704.03-The Director of EPA shall develop programs for prevention and abatement of air pollution. He shall further prescribe emission standards for various areas of this state. The Director shall further prohibit the location or modification of any machine or device which the Director finds may cause or contribute to air pollution and the Director is to grant permits and variances from the regulations as adopted under subsection (F). Section 3707.42-After obtaining the approval of the Director of EPA the legislative authority of a municipal corporation may contact, to erect and maintain a sanitary plant. Section 3734.02-The Director of EPA is to adopt regulations with uniform state-wide application as to cities, facilities for solid waste disposal, so as to avoid creation of a nuisance or cause water pollution. Section 3745.01-The Environmental Protection Agency shall administer laws for the control and abatement of air and water pollution, resource, management, planning of water and disposal and treatment of solid wastes, sewage, etc. Section 3745.01-EPA is to operate the state government in ways to designed to minimize environmental damage and to assist and cooperate with governmental agencies to restore, protect and enhance the quality of the environment. Section 4906.04-Before a power site may be granted a certificate allowing construction of major utility facility, it must consider environmental impact and must comply with the air, water and solid waste requirements. Section 3745.09-If the Director of EPA should find a violation is caused by pollution sources outside the state of Ohio, he shall notify the other state, the United States Environmental Protection Agency and the Ohio Attorney General so as to secure compliance. Section 3745.011-The Environmental Protection Agency is to administer the air, water and natural resources of the state for the benefit of the people in the state. Section 3734.05-Each person proposing to open a new solid waste disposal site shall obtain the approval of the Director of EPA

ENVIRONMENTAL PROTECTION AGENCY

-continued-

2) General Powers and Duties-Section 1541.21-The territory included within any state park, canal, reservoir, lake or nature preserve and surrounding lands extending back one mile therefrom is designated as a special sanitary district. Such district shall be under the control and management of the Environmental Protection Agency for sanitary purposes. Section 1545.21-The Director of the Environmental Protection Agency may make and enforce rules relating to the location, construction and repair of stock yards, hog pens, septic tanks and all other places where offensive substances or liquids may accumulate within sanitary districts.

3) Specific Power

a) Land

b) Water-Section 1505.07-The Director of the Department of Natural Resources with the approval of the Director of EPA, the Attorney General and the Governor may issue permits for permission to take and remove sand, gravel stone, gas, oil and other minerals or other substances from and under the bed of Lake Erie and no permit allowing the removal of oil and gas from the bed of Lake Erie should be issued until July 1, 1978. Section 1547.331-Only boats, with proper sewage disposal facilities as determined by regulation of EPA, may operate on Lake Erie. Section 6111.03-The Director of EPA may modify the terms and conditions of a permit or issue a permit upon conditions and variance from a national effluent limitation under the Federal Water Pollution Control Act of 1972. Section 6111.03-The Director of EPA is to develop plans to prevent the pollution of state waters, and to issue permits for the disposal of wastes into waters of the state. EPA shall supervise the operation and maintenance of public water supply systems. Section 6111.42-EPA shall prepare boundaries of water shed districts. Section 6111.44-EPA is to approve sewage and water purification works for disposal procedures of any municipal corporation. Section 6112.02-EPA is to grant approval for a private sewer system if it is conducive to safety and welfare. The Ohio Water Development Authority is authorized to engage in water management not inconsistent with the standards set for the waters of the state by the Director of EPA.

4) Power to Appropriate

5) Power to Lease, Sell or Promote Development of Land

6) Exceptions to Powers-Section 3704.07- The Director has no power to adopt regulations which supercede or limit a law relating to industrial health, safety or sanitation within the bounds of industrial property. Section 3704.11-A political subdivision may legislate in this area but may not be less stringent or inconsistent with this legislation.

ENVIRONMENTAL PROTECTION AGENCY

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7) Rule Making Powers-Section 1545.21-Director of Environmental Protection Agency adopts rules and regulations to protect the public health and maintain water quality. Section 3704.03-EPA is to adopt regulations for prevention and control of air pollution from all sources in the state. Section 6111.042-Director of EPA should adopt and enforce regulations setting forth and requiring compliance with the national effluent limitations, etc. Section 6111.03-The Director of EPA is to issue, modify or revoke orders to prevent, control or abate water pollution.

OHIO WATER DEVELOPMENT AUTHORITY

- 1) Creation of the Authority-Section 6121.02, Section 6123.01 and Section 6123.02.
- 2) General Powers and Duties-Section 6121.03-Public policy of the state is to preserve, develop, conserve and manage the water resources of the state, to prevent or abate the pollution of water resources and to promote the beneficial use of waters for the protection and preservation of health, safety, convenience, etc. Section 6123.04-The Ohio Water Development Authority shall acquire, construct, re-construct, re-enlarge, etc. solid waste projects and establish rules and regulations for the use of such projects.
- 3) Specific Powers
  - a) Land-Section 6121.04-The authority may construct, maintain etc. water development projects. Section 6123.13-When the Ohio Water Development Authority finds it necessary to change the location of any portion of any public road, state highway, railroad, or public utility facility, in connection with the construction of a solid waste project, it should cause the same to be re-constructed at such location as the division of government having jurisdiction over said road, etc. finds most favorable.
  - b) Water-Section 6121.04-The Ohio Water Development Authority may adopt rules and regulations to protect augmented flow in the waters of the state to the extent augmented by a water development project, from depletion, so it will be available for beneficial use.
- 4) Power to Appropriate-Section 6121-04 (J)-The authority may condemn property (public or private) as it deems necessary. Section 6121.04 (H)-The authority may appropriate land for solid waste disposal sites.
- 5) Power to Lease, Sell or Promote Development of Land-Section 6121.03-The authority may lease water development projects.
- 6) Exceptions to Powers-Section 6121.04-The authority may not condemn waste water or waste management facilities.
- 7) Rule Making Powers-Section 6121.04-The authority is to develop rules and regulations to protect the augmented flow of water of the state from depletion.

## AIR QUALITY DEVELOPMENT AUTHORITY

1) Creation of the Authority-Section 3706.02-The purposes of Chapter 3706 shall be held to be and are hereby determined to be essential governmental functions and public purposes of the state.

2) General Powers and Duties-Section 3706.03-The Air Quality Development Authority shall provide for the conservation of air as a natural resource and shall prevent pollution of the air so as to provide for the health, safety and general welfare of all the inhabitants of the state. In furtherance of public policy the Ohio Air Quality Development Authority may initiate, acquire, repair and operate air quality projects.

### 3) Specific Powers

a) Land-Section 3706.16-The Ohio Air Quality Development Authority may acquire by purchase, whenever it finds such purposes expedient, any land, franchise, easement or other interest in land as it finds necessary or convenient, for the construction or operation of any air quality project. Section 3706.13-When the Ohio Air Quality Development Authority finds it necessary to change the location of any portion of any public road, railroad, state highway or public utility facility in connection with the construction of a air quality project, it shall cause the same to be re-constructed at such location as the division of government having jurisdiction over such road, public utility, etc. finds most favorable and the authority shall bear the cost of such re-construction, relocation etc.

### b) Water

4) Power to Appropriate-Section 3706.04 (J)-The Ohio Air Quality Development Authority may acquire in the name of the State by purchase or otherwise on such terms and in such manner as the Authority finds proper or by the exercise of the right of condemnation. Section 3706.17-The Ohio Air Quality Development Authority may acquire by appropriation any lands franchises or other property necessary or proper for the construction and efficient operation of any air quality project.

### 5) Power to Lease, Sell or Promote Development of Land

6) Exceptions to Powers-Section 3706.04 (J)-The Authority may not appropriate an air quality facility of a person or governmental agency. Section 3706.17-The Authority may not disturb property of public utility or common carrier in interstate commerce, unless duplication or restoration is provided.

7) Rule Making Powers-Section 3706.04-The Ohio Air Quality Development Authority shall establish rules and regulations for air quality projects.



## DEPARTMENT OF TRANSPORTATION

### 1) Creation of the Authority- Section 5501.02

2) General Powers and Duties-Section 5521.011-In determining new highway locations, the Director of Transportation is to consider health, safety and use factors. Section 5521.02-The Director and County Commissioners may cooperate in re-construction of bridges, etc., and as to comprehensive transportation and land use studies. Section 5501.42-The Director shall have control of trees and shrubs within the limits of a state highway. Section 4561.10-If a municipal corporation fails to mark itself for aviation purposes, the Director of the Department of Transportation shall do so. Section 4561.11-The Department must approve airports to be used for commercial purposes. Section 1523.14-The Department of Transportation approves municipal construction of bridges, etc., along with the Chief of the Division of Water. Section 5501.31-The Director of the Department of Transportation supervises the state highway system. Section 5501.03-The Director shall prepare comprehensive plans for public transportation facilities and prepare for mass transit facilities.

### 3) Specific Powers

a) Land-Section 4153.11-Unless a permit has been issued by the Director of Transportation or the Board of County Commissioners or the Board of Township Trustees or such other public authority that is charged by law with the maintenance of a public road with the approval of the Chief of Division of Reclamation and the Department of Natural Resources, no person, firm or corporation engaged in a mining or quarrying any mineral stone or clay shall have a mine closer than 50 feet to any public road. Section 5501.31-The Director may authorize widening of any state highway, etc. Section 5511.04-The Director may re-locate highways going through Conservancy Districts. Section 5521.01-The Director may repair, etc. state roads in municipal corporations if the municipal corporation so approves.

b) Water-The Director may enter into agreements with the Secretary of Defense in connection with the establishment, maintenance, repair, etc. made necessary by rivers improvements, to highways and lands under jurisdiction and control of the Director. Section 5501.31-The Director may authorize the widening of or straightening of a highway in connection with the deepening or straightening of a water course.

4) Power to Appropriate-Section 5501.31-The Director may appropriate property necessary for the construction of bridges, etc. Section 5519.01-The Director may appropriate land for roads, bridges, etc. if necessary for the public convenience. Section 5579.01-The Director, the Board of County Commissioners or Board of Township Trustees may in connection with any road improvement, appropriate any drainage rights outside of a line of a highway

DEPARTMENT OF TRANSPORTATION  
continued-

5) Power to Lease, Sell or Promote Development of Land-Section 5501.37-The Director may sell unneeded property. Section 5501.45-The Director may convey any interest in land.

6) Exceptions to Powers

7) Rule Making Powers-Section 4561.05-The Department of Transportation issues rules for air navigation. Section 5501.02-The Director may prescribe rules to carry out the powers and functions of the Department.

## DEPARTMENT OF AGRICULTURE

1) Creation of the Authority-Section 901.01, and Section 921.06-The Department of Agriculture may adopt measures for the protection of vineyards and commercial vegetable areas in the state from herbicides which are found to have a harmful effect.

2) General Powers and Duties-Section 901.30-The Director of the Department of Agriculture may apply to the Secretary of Agriculture of the United States for Rural Rehabilitation Funds. Section 905.32-The Director of Agriculture shall issue permits for the use and manufacture of fertilizer. Section 921.06-The Director of the Department of Agriculture shall control herbicide use. Section 921.63-The Director of Agriculture shall serve as the Pest Control Compact Administrator of the State. Section 921.14-The Director of Agriculture may after due public hearing, declare as a pest, any form of plant or animal life which is injurious to plants and declare which economic poisons are highly toxic to man. Section 921.20-The Director of Agriculture may cooperate with any other official agency for the purpose of carrying out and making sure that pesticide regulation is uniform throughout the state.

### 3) Specific Powers

a) Land-The Director shall issue permits regulating: Section 913.02-Commercial canneries, Section 911.03-Bakeries, Section 913.23-Soft drink bottlers, Section 915.02-Cold storage warehouses, Section 917.05-Dairies.

b) Water

4) Power to Appropriate-No specific grant.

5) Power to Lease, Sell or Promote Development of Land

6) Exceptions to Powers

7) Rule Making Powers-Section 901.03-The Department of Agriculture shall adopt rules and regulations as to the conduct of investigations. Section 905.40-The Department shall promulgate rules as to the regulation of fertilizer, use and manufacture. Section 921.07-The Director may issue orders restricting the use of certain chemicals, fungicides and insecticides. Section 921.14-The Director of Agriculture may adopt appropriate rules and regulations providing for the collection and examination of samples of economic poisons.

## DIVISION OF MINES

- 1) Creation of the Authority-Section 4151.03
- 2) General Powers and Duties-Section 1509.031-Chief of the Division of Mines is to, in certain cases, review the approval of the Chief of the Division of Oil and Gas, allowing liquid disposal injection into an existing well or mine. Section 4151.03-The Division of Mines shall enforce and supervise the execution of all laws enacted for the health and safety of persons within, about or in connection with mines, mining and quarries.
- 3) Specific Powers
  - a) Land-Section 4153.111-No person shall conduct mining operations within 300 feet of an oil or gas well without permission from the Division and from the Chief of the Division of Oil and Gas.
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 4153.11-Unless a permit has been issued by the Director of Transportation or the Board of County Commissioners or the Board of Township Trustees or such other public authority that is charged by law with the maintenance of a public road, with the approval of the Chief of Division of Reclamation and the Department of Natural Resources, no person, firm or corporation engaged in a mining or quarrying any mineral stone or clay shall have a mine closer than 50 feet to any public road.
- 7) Rule Making Powers-Section 4151.03-Chief of the Division shall establish regulations, not inconsistent with the mining laws of the State of Ohio. Section 4151.05-The Chief of the Division shall issue regulations for gas storage and inspectors, chemists, etc.

DEPARTMENT OF ADMINISTRATIVE SERVICES

1) Creation of the Authority-Section 123.01

2) General Powers and Duties-Section 123.01-The Department of Administrative Services shall have general supervision over the construction of any projects, improvements, of public buildings constructed for the state and shall prepare and suggest comprehensive plans for the development of grounds and buildings under control of the state.

3) Specific Powers

a) Land

b) Water-Section 123.03-The waters of Lake Erie consisting of the territory within the boundaries of the state together with the soil beneath, and its contents, belong to the State of Ohio as a trust for the people of the state, for the public uses which it may adapt, subject to the powers of the United States government, to the public rights of navigation, water commerce, fishing and further subject to the property rights of littoral owners including the right to make useable land use of the waters in front of or flowing past their lands. The Department of Administrative Services is the state agency charged with the care, protection and enforcement of the state's rights.

4) Power to Appropriate-Section 123.21-The Director of Administrative Services may take possession of lands if an injury or obstruction in any of the public works which would materially impair their immediate use exists. Section 123.45-The Director of Administrative Services is authorized to appropriate an easement for an overflow of a canal.

5) Power to Lease, Sell or Promote Development of Land-Section 123.62-The Director of the Department of Administrative Services may lease unnecessary lands as long as there is no interference with navigation of canals. Section 123.68-The Director may sell land after the Director of Natural Resources has determined that such lands are unsuitable for future or present recreational use. Section 123.70-All sales leases or conveyances of any water or right to use the same for hydraulic power made by the Director of Administrative Services shall be subject to the rights of the State for purposes of navigation, and for the maintenance of state reservoirs as state parks and pleasure resorts. Section 123.031-Whenever the state acting through the Governor upon the recommendation of the Director of Administrative Services determines that any land underlying the waters of Lake Erie can be developed and improved or the waters thereof used as specified without impairment to the public right of navigation, etc., the state may lease all or part of its interest subject to the powers of the United States government. Section 155.09-Director may lease swamp lands, or overflow lands, with approval of Governor and the Attorney General for fish and game preserves.

DEPARTMENT OF ADMINISTRATIVE SERVICES CONT'D

6) Exceptions to Powers

7) Rule Making Powers-Section 123.03-Any order of the Director of Administrative Services in any manner pertaining to the care, protection and enforcement of the state rights in said territory of Lake Erie shall be deemed a rule or adjudication. Section 123.76-The Department of Administrative Services shall make and enforce rules and regulations pertaining to bodies of water and adjacent land, under the supervision of the department, that are used by the general public for recreational purposes as may be necessary for the proper control of management of said lands and bodies of water.

## STATE BOARD OF HOUSING

- 1) Creation of the Authority-Section 3735.01-The State Board shall consist of the Director of Public Welfare, Director of Administrative Services, Director of Economic and Community Development and four others appointed by the Governor.
- 2) General Powers and Duties-Section 3735.02-No housing project proposed by a limited, dividend housing company shall be undertaken and no building or other construction shall be placed under contract or started without the approval of the State Board of Housing. Section 3735.13-A limited dividend housing company is one organized for a public purpose with return on initial investment limited to six percent per annum. All powers granted are subject to Board approval.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate-Section 3735.11-When the State Board of Housing has approved a project of a limited dividend housing company, the property required for such project may be acquired by the exercise of the power of eminent domain.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers

## METROPOLITAN HOUSING AUTHORITY

- 1) Creation of the Authority-Section 3735.27-A Metropolitan Housing Authority is created by resolution of the State Board of Housing when it is determined that there is a need for a housing authority in any portion of any county that comprises two or more political subdivisions, but it less than all territory within the county.
- 2) General Powers and Duties-Section 3735.27-The State Board of Housing shall adopt the resolution creating a Metropolitan Board of Housing when it is determined that there are unsanitary or unsafe inhabited housing within the area or there is a shortage of sanitary housing accommodations within the area. Section 3735.31-The Metropolitan Housing Authority has the power to clear, plan and rebuild slum areas within the district, under its authority, and to create and provide safe and sanitary housing accommodations to families of low income, within the district.
- 3) Specific Powers
  - a) Land-Section 3735.44-The planning, zoning and sanitary laws of the state and of any political subdivision in which a housing project is located shall apply to housing projects of the Metropolitan Housing Authority to the same extent as if said projects were planned and constructed or operated by private persons.
  - b) Water
- 4) Power to Appropriate-Section 3735.32-A Metropolitan Housing Authority may appropriate, enter upon and hold real estate within its territorial limits.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 3735.44-Before any housing project of an authority is considered by the authority or any real estate acquired or any agreement for its acquisition is made, the location, extent and general features of the proposed layout shall be submitted to the Planning Commission of the municipal corporation in which the proposed project is located for the advice of such planning commission.
- 7) Rule Making Powers



## OHIO BUILDING AUTHORITY

- 1) Creation of the Authority-Section 152.01
- 2) General Powers and Duties-Section 152.03-The Ohio Building Authority may purchase, construct, enlarge and operate buildings for the purpose of aiding persons who are eligible to receive old age, survivors, or disability insurance payments and are determined to be unable as a result of mental illness to protect, to provide complete care for themselves, and to conduct investigations into housing and living conditions.
- 3) Specific Powers
  - a) Land-Section 152.05-Any department of the state with the consent of the Governor may enter into an agreement with the Ohio Building Authority permitting the authority to use land under the control of the department, not required for the purposes of the department.
  - b) Water
- 4) Power to Appropriate-Section 152.21-May appropriate land for the construction of state buildings or for the use of state agencies only.
- 5) Power to Lease, Sell or Promote Development of Land-Section 152.05-The Ohio Building Authority may use unused land owned by another state agency or department.
- 6) Exceptions to Powers
- 7) Rule Making Powers

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

- 1) Creation of the Authority-Section 122.01
- 2) General Powers and Duties--Section 122.01-The Department of Economic and Community Development shall develop and promote plans and programs designed to assure that state resources are efficiently used, economic growth is properly balanced, community growth is developed in a proper manner and local governments are coordinated with each other and the state. Section 122.06-The Department of Economic and Community Development shall prepare plans and recommendations of the plans for the promotion for more desirable patterns of growth and development of resources of the State. Section 122.03-The Director of the Economic and Community Development shall serve as an advisor to the Governor and various state department boards, agencies and commissions with respect to energy development.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers-Section 122.06-The Department of Economic and Community Development shall recommend guidelines for the development and management of duties of communities, shall prepare and maintain rules and regulations concerning certification of workable programs for impacted cities.

## POWER SITING COMMISSION

- 1) Creation of the Authority-Section 4906.02-Power Siting Commission shall be comprised of the Chairman of the Public Utility Commission, Director of EPA, the Director of Health, Director of Development and a member of the public who shall be an engineer.
- 2) General Powers and Duties-Section 4906.03-The Power Siting Commission shall compile and publish each year, the general locations of the proposed power plant sites and approve or disapprove applications for a certificate. Section 4906.04-No person shall commence to construct a major utility facility, meaning an electric generating plant, gas or natural gas transmission line, etc. without first having obtained a certificate for the facility from the Commission. Section 4906.10-The certificate shall be conditioned upon the facility being in compliance with the standards and regulations adopted under Chapters 3704, 3734 and 6111 relating to (1) Air Pollution Control, (2) Solid Waste Disposal and (3) Water Pollution Control.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers

## UTILITIES AND PUBLIC UTILITIES COMMISSION

- 1) Creation of the Authority-Section 705.82-The Director of Public Service shall manage and be responsible for the construction and improvement of all utilities owned or operated by a municipal corporation, etc. Section 4905.06-The Public Utilities Commission shall have general supervision over all public utilities.
- 2) General Powers and Duties-Section 4933.25-The Commission issues certificates of public convenience to a sewage disposal system, permitting it to operate. Section 4931.02-A telegraph company may construct and own lines, etc., and may appropriate land needed for such lines. Section 4933.13-An electric company with consent of a municipal corporation may construct power lines, etc.
- 3) Specific Powers
  - a) Land
  - b) Water-Section 4933.151-A company supplying water may appropriate land, unless the land is essential to a corporation, possessing the power of eminent domain.
- 4) Power to Appropriate-Section 4931.02-A telegraph company may appropriate land that is needed for construction of lines. Section 4931.06-A telegraph company may appropriate land of a railroad, within 5 feet of the railroads outer most limits of right of way. Section 4933.15-An electric company may appropriate, unless the land is essential to an corporation, having the power of eminent domain.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 4931.08-If a telegraph company needs land dedicated to a public use, a municipal corporation may compromise or have probate court direct the result.
- 7) Rule Making Powers-Section 743.02-The Director of Public Services makes rules for the regulation of municipal water works.

APPENDIX C.

Municipal, County and  
Regional Authorities

## BOARD OF COUNTY COMMISSIONERS

1) Creation of the Authority-Section 302.08-Board of County Commissioners is elected by the residents of the county.

2) General Powers and Duties-Section 302.13-The Board of County Commissioners may establish a Department of Finance, Welfare, Health, Public Works, a Department of Sewers and Water; may acquire, maintain and lease property including buildings and other public improvements as provided by law and may, by ordinance, make any rule or act in any manner, specifically provided by general law. Section 1545.02-The Board of County Commissioners shall be responsible for the creation of Park Districts. Section 303.37-The Board of County Commissioners shall have the powers to undertake and carry out County Renewal Projects within the county but outside the corporation limit of cities. Section 6151.09-The Board of County Commissioners may cause a river, creek or water course to be straightened or cleaned out for the purpose and protection of any bridge or road within its control. Section 5553.02-The Board of County Commissioners may locate, alter, etc. roads within the county. Section 5555.02-The Board may construct or repair a public road within the county. Section 5551.01-The Board may divert a river if necessary to provide proper location for a bridge or road.

### 3) Specific Powers

a) Land-Section 303.02-The Board of County Commissioners may, in accordance with the comprehensive plan, regulate, by resolution, the location, height, sizes of yards, uses of building and for such purposes, may divide all or any part of the unincorporate territory of the county, into districts or zones. Section 307.20-The Board of County Commissioners shall have the same authority with respect to airports, landing fields, and other air navigation facilities as is conferred upon municipal corporations and may operate thereon public recreation facilities and public parks.

b) Water-Section 307.77-The Board of County Commissioners may give aid to a department of the United States or of the state for public improvement to reduce flood damage or regulate stream channels. Section 343.01-The Board has authority to create county refuse and disposal districts. Section 6151.09-The Board of County Commissioners may cause a river, creek or water course to be straightened or cleaned out for the purpose and protection of any bridge or road within its control. Section 5551.01-The Board may divert a river if necessary to provide proper location for a bridge or road.

BOARD OF COUNTY COMMISSIONERS

-continued-

4) Power to Appropriate-Section 303.38-The Board of County Commissioners may acquire by eminent domain any interest in real property which it deems necessary for or in connection with the County Renewal Project within the county. Section 307.03-The Board of County Commissioners may appropriate land for a right of way or easement, etc. Section 5555.09-The Board may appropriate lands needed for the improvement of county roads. Section 5570.01-The Board may appropriate drainage rights in connection with a road improvement. Section 5579.02-The Board may appropriate drainage rights in connection with a right of way.

5) Power to Lease, Sell or Promote Development of Land-Section 303.27-The Board of County Commissioners shall afford maximum opportunity, consistent with the sound needs of the county, to the rehabilitation or redevelopment of the county renewal area by private enterprise. Section 307.11-When the county would be benefited, the Board of County Commissioners may make, execute and deliver contracts or leases to mine iron ore, stone, gas and other minerals upon lands owned by such county.

6) Exceptions to Powers-Section 303.18-Zoning Regulations issued by the Board of County Commissioners shall not apply within municipal corporations. Section 302.13-In cases of conflict between the Board and a municipal corporation or a township, in the exercise of their powers, the municipality or township shall prevail.

7) Rule Making Powers

## COUNTY RURAL ZONING

- 1) Creation of the Authority-Section 303.02-Board of County Commissioners      Section 303.04-County Rural Zoning Commission.
- 2) General Powers and Duties-Section 303.02-For the purpose of promoting the public health, safety and morals, the Board of County Commissioners may divide all or any part of the unincorporated territory of the county into districts or zones of such number, shape and area as the Board determines.      Section 303.04 and Section 303.05-The Board of County Commissioners shall create and establish a County Rural Zoning Commission which shall submit a plan representing the recommendations of the Zoning Commission for the carrying out by the Board of County Commissioners of the zoning activities.
- 3) Specific Powers
  - a) Land-Section 303.22-Where the people of a township have approved Township zoning regulations prior to the adoption of a county rural zoning resolution by the Board of County Commissioners and the county plan includes area covered by the township zoning plan, the zoning resolution adopted by the Township Trustees shall take precedence over the zoning resolution adopted by the Board of County Commissioners, unless a majority of township residents approve the county rural zoning plan.
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 303.21-The County Rural Zoning Commission and the Board of County Commissioners may not prohibit the use of any land for agricultural purposes nor may they prohibit the location or erection, change, enlargement or alteration of any building or structures of a public utility or railroad nor may they prohibit the use of any land for the construction of a building and operation of any mercantile or retail establishment, drugstore, lunchroom, place of establishment in any area zone for trade or industry.
- 7) Rule Making Powers



### AIRPORT ZONING BOARDS

- 1) Creation of the Authority-Section 4563.03
- 2) General Powers and Duties-Section 4563.03-When an airport is publicly owned and all airport hazard areas, pertaining to such airport are located in the territorial limits of one political subdivision, the legislative authority of the political subdivision shall constitute the Airport Zoning Board.
- 3) Specific Powers
  - a) Land-Section-4563.03-The Airport Zoning Board may adopt and enforce airport zoning regulations for such airport hazard area. The Board may pass its regulations dividing hazard areas into zones, may regulate and restrict land uses which, by their nature, constitute airport hazards and may restrict the height to which structures may be erected or objects of natural growth, allowed to grow. Section 4563.05-Prior to any initial zoning, the Airport Zoning Board is to appoint a Commission to be known as the Airport Zoning Commission to recommend the boundaries of various zones, etc.
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 4563.04-When airport zoning regulations conflict with other zoning regulations applicable to the same area, the limitation or requirement best calculated to insure safety, shall govern. Section 4563.09-No airport zoning regulation shall require the change of a prior non-conforming use.
- 7) Rule Making Powers-Section 4563.06-No airport zoning regulation shall be adopted except, that, by the legislative body of the political subdivision, after public hearing.

COUNTY AND REGIONAL PLANNING COMMISSION

- 1) Creation of the Authority-Section 713.22-The Board of County Commissioners of any county may and on petition of the planning commission of a majority of the municipal corporations in the county having such planning commissions, shall provide for the organization and maintenance of a county planning commission.  
Section 713.21-The planning commission of any municipal corporation or group of municipal corporations or any board of township trustees and the board of county commissioners of any county which such municipal corporation or group of municipal corporations are located may cooperate in the creation of a Regional Planning Commission.
- 2) General Powers and Duties-Section 713.23-A regional or county planning commission shall make recommendations concerning the environment and economic aspects of the region, prepare goals, ascertain land use and open space and determine area for purposes of conservation. Section 713.25-The planning commission of any municipal corporation to which a regional or county plan is certified may adopt such plan and shall there upon have the same force within the municipal corporation and is provided by law or charter for plans prepared and adopted by the local planning commission.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land-Section 713.25-The County or Regional Planning Commissions shall review and evaluate and make recommendations for the planning, location and scheduling of public facility projects within the region and affecting the development of the area.
- 6) Exceptions to Powers
- 7) Rule Making Powers

## COUNTY TRANSIT SYSTEM

- 1) Creation of the Authority-Section 306.01-A County Transit System and a County Transit Board shall be created by resolution of the Board of County Commissioners.
- 2) General Powers and Duties-Section 306.04-The County Transit Board shall control and operate the County Transit System.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate-Section 306.04-The County Transit Board shall exercise the power or eminent domain to appropriate any real estate interests within or without the county necessary and proper for the exercise of its powers.
- 5) Power to Lease, Sell or Promote Development of Land-Section 306.06-County Transit Board may enter into an agreement with any municipal corporation, township or other county whereby such Board undertakes to provide transportation services for the movement of persons within, from, or to such municipal corporations, townships or county.
- 6) Exceptions to Powers-Section 306.04 (0) (1)-The Board may not appropriate property of a state or municipal corporation without consent of the state, municipal corporation, etc. The Board may appropriate property of a common carrier, public utility, etc. only if it provides for duplication or restoration.
- 7) Rule Making Powers

### REGIONAL TRANSIT SYSTEMS

- 1) Creation of the Authority-Section 306.32-A Regional Transit Authority may be created by any county or any two or more counties, municipal corporations, townships or combination thereof for the purpose of acquiring, operating, maintaining, extending transit facilities.
- 2) General Powers and Duties-Section 306.34-All the power and authority granted to a Regional Transit System or Authority shall be vested in a Board of Trustees which shall manage and conduct its affairs. Section 306.35-A Regional Transit Authority may acquire, improve, extend and make changes for the use of transit facilities.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate-Section 306.36-The Board of Trustees for a Regional Transit Authority may exercise power of eminent domain to appropriate any land, right, easement or other property which is within or without the territorial boundaries of the transit authority, necessary or proper to the construction or efficient operation of any transit facility.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 306.36-A Regional Transit Authority does not have the power to appropriate any land or easement belonging to the state or municipal corporation without the consent of the state or municipal corporation. Section 306.46-Nothing in the chapter pertaining to Regional Transit Authorities shall limit the exercise of the power or authority granted to the counties, municipal corporations.
- 7) Rule Making Powers-Section 306.35-The Regional Transit Authority may make, adopt, amend and repeal by-laws for the administration of its affairs and rules and regulations so as to control the administration and operation of transit facilities under its jurisdiction.

## PORT AUTHORITIES

- 1) Creation of the Authority-Section 4582.02-Any municipal corporation, township, county or combination of the above, no one of which has been included in a Port Authority in existence on December 15, 1964, comprised more than one subdivision, may create a Port Authority.
- 2) General Powers and Duties-Section 4582.07-The Board of Directors, as created under Section 4582.03, prepares a plan for future development and shall give notice to land owners, upland and contiguous to submerged land. Section 4582.03-The Port Authority shall be governed by a Board of Directors. Section 4582.06-The Authority may construct and operate docks, warehouses, aviation facilities and recreational facilities in, or on the water or waterfront.
- 3) Specific Powers
  - a) Land
  - b) Water-Section 4582.06-The Port Authority may straighten and deepen water courses necessary for proper development of the port.
- 4) Power to Appropriate-Section 4582.06-A Port Authority may exercise the right of eminent domain to appropriate any land rights and way, necessary or proper for the construction or efficient operation of any facility of the Port Authority and included in its official plan. The Authority must provide for duplication, relocation if public property or property of a common carrier in interstate commerce is appropriated.
- 5) Power to Lease, Sell or Promote Development of Land-Section 4582.06-A Port Authority may purchase, sell, lease wharves, etc.
- 6) Exceptions to Powers-Section 4582.16-No municipal corporation participating in a Port Authority shall, during the authority's existence, exercise powers over Lake Erie.

## PARK DISTRICTS

- 1) Creation of the Authority-Section 1545.01 & 1545.02-Park districts may be created by petition to the Probate Court of the county in which the district is to be located and will be so created if the petition is signed by the majority of the electors residing within the proposed district. Districts may also be created by resolution of a board of county commissioners, board of township trustees or legislative authority of any municipal corporation, within such proposed district.
- 2) General Powers and Duties-Section 1545.05-Upon creation of the park district, the probate judge creating the district shall appoint three (3) Commissioners to constitute a Board. Section 1545.07-Board of Park Commissioners has the power to hire personnel for the purposes of acquiring, planning, developing, protecting, maintaining or improving land
- 3) Specific Powers
  - a) Land-Section 1545.11-The Board may acquire land for forest reserves and for conservation of resources of the state. Section 1545.15-Territory adjacent to the park district may be annexed upon petition to the board of park commissioners who will there upon request the probate court to allow the annexation.
  - b) Water-Section 1545.29-State canal lands abandoned for canal use may be leased to any part district.
- 4) Power to Appropriate-Section 1545.11-The Board of Park Commissioners may acquire lands within or without the park district for conservation into forest reserves and for the conservation of natural resources of the state including streams, lakes, submerged lands, and swamp lands.
- 5) Power to Lease, Sell or Promote Development of Land-Section 1545.12-Board may sell unneeded land or may lease land for purposes not inconsistent with the purposes for which the land was acquired.
- 6) Exceptions to Powers-Section 1545.14-Park Districts have no power to acquire or control any property owned or controlled by any other public authority, except by agreement.
- 7) Rule Making Powers-Section 1545.09-Board of Park Commissioners may create rules to protect the park and to preserve good order adjacent to the park.

## SEWER DISTRICTS (COUNTY AND REGIONAL)

- 1) Creation of the Authority-Section 6117.01-Created by resolution of the Board of County Commissioners, as long as district is to include unincorporated territory. Section 6119.01-If a district is to encompass and to include territory from more than one county, a Regional Sewer District is to be created.
- 2) General Powers and Duties-Section 6117.06-After the establishment of a Sewer District, the Board of County Commissioners shall have prepared by the County Sanitary Engineer, a general plan for sewage and sewage disposal, for said district. Section 6119.01-Any area situated in an unincorporated part of one or more contiguous counties or in one or more municipalities or both may be organized as a Regional Water and Sewer District, to supply waters to users and to provide for the collection, treatment and disposal of waste water within and without the district.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate-Section 6117.39-Whenever in the opinion of the Board of County Commissioners, it is necessary to procure land for the construction, maintenance or operation of any sewer, the Board may appropriate such real estate, right of way, easement, etc. Section 6117.47-The Board may appropriate property necessary for the proper construction and maintenance of a trunk or main sewer. Section 6117.48-The Board of County Commissioners may appropriate land necessary for an easement for a trunk or main sewer. Section 6119.11-The Board of Trustees of a Regional Water and Sewer District may condemn land for the use of the district.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers-Section 6117.01-Rules and regulations of the Board shall not be inconsistent with the rules of the Environmental Protection Agency. Section 6119.03-The Regional Authority has powers to make rules and regulations through its Board of Trustees.

## SANITARY DISTRICTS

1) Creation of the Authority-Section 6115.04-The Common Pleas Court upon petition creates a district to clean polluted streams and regulate their flows for sanitary purposes.

2) General Powers and Duties-Section 6115.16-The Board of Directors of a Sanitary District shall prepare a plan for the improvement for which the district was created. Section 6115.16-Upon completion of such plan, the Board shall submit it to the Environmental Protection Agency for approval. Section 6115.18-The powers of the Board are limited to the construction and maintenance of such works that are necessary to carry out the purposes of the district, in improvement of sanitation and water supply.

3) Specific Powers

a) Land

b) Water

4) Power to Appropriate-Section 6115.22-The Board may condemn land not already condemned by the Court. Section 6115.21-The Board when it deems it necessary shall have dominant right of eminent domain over railroads, telegraph, telephone companies, counties, municipal corporations and other local governmental authorities.

5) Power to Lease, Sell or Promote Development of Land-Section 6115.18-The Board may encumber and lease land needed for the location of works of the district.

6) Exceptions to Powers-Section 6115.18-The Board of Directors of a Sanitary District do not have the power to construct, maintain lateral sewers or sewer systems, water mains, etc. for local service within the political subdivisions forming the district; such improvements in every case being provided by the public corporations or persons served by the works of the district. Section 6115.15-If a Sanitary District is established for purposes other than the provision of water supply, for public use, no public corporation shall install within such district any outlet for discharge of sewage or other liquid wastes until the plans have been submitted to and received approval by the Board.



## CONSERVANCY DISTRICTS

- 1) Creation of the Authority--Section 1515.01--Conservancy districts are created upon the petition to the Soil and Water Conservation Committee. Section 1515.05--The Conservancy District shall be governed by supervisors. Section 6101.13--The Director of the Environmental Protection Agency must approve the creation of a conservancy district.
- 2) General Powers and Duties--Section 1515.03--Supervisors may investigate soil erosion and prevent erosion. Section 1511.01--Conservancy districts may receive aid from the Division of Land and Soil. Section 6101.24--The property and water of the district shall be used to best promote welfare of the inhabitants, etc.
- 3) Specific Powers
  - a) Land--Section 1515.08--The District may implement, plan, construct etc. and operate preventive and control measures authorized under state and federal programs for natural resource conservation and flood prevention and utilization of water within the district, subject to the approval of the Director of Natural Resources.
  - b) Water
- 4) Power to Appropriate--Section 6101.03--The Board of Directors of Conservancy districts may condemn to the uses of the district any land or property within or without said district, not acquired or condemned on the report of the board of appraisers of the conservancy district. Section 6101.17--The board of a district shall have a dominant right of eminent domain over railroad, telegraph, telephone companies, townships, municipal corporations etc.
- 5) Exceptions to Powers--Section 1515.13--Nothing contained within the section pertaining to the Soil and Water Conservation Committee shall constitute an infringement upon the powers and rights of the Division of Wild Life.
- 7) Rule Making Powers--Section 6101.24--The board may make regulations for the determination and measurement of the increased better, or more convenient use of, or benefit of the water supply of the district, for determining rates of compensation and for security to all parties interested, the greatest and best use of the waters thereof.

## WATER SHED DISTRICTS

- 1) Creation of the Authority-Section 6105.02, and Section 6111.42.
- 2) General Powers and Duties-Section 6105.12-The Board of Directors shall develop plans for water use, prepare plans for submission to the Environmental Protection Agency detailing water resource control. Section 6111.42-The Director of EPA shall have the authority to prepare an accurate map and description of the territorial boundaries of proposed water shed districts within the state. Section 6105.131-The Board of Directors of a Water Shed District shall recommend appropriate means to resolve water conflicts among water user interests and between geographis areas within the territorial boundaries of the district, shall designate specific reaches in the channel of any water course within the territorial boundaries of the district as a restricted channel and shall issue permits authorizing the construction change or alteration of the structure or obstruction in a restricted channel, etc.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers

## MUNICIPAL CORPORATIONS

1) Creation of the Authority-Article 18, Section 3 of the Ohio Constitution. Section 701.05

2) General Powers and Duties-Section 715.06-A municipal corporation may establish and operate municipal lighting, power and heating plants and procure everything necessary for such operation. Section 717.01-A municipal corporation may acquire by purchase or condemnation, real property, construct wharves and lands on navigable water, construct or require water works to supply water to the inhabitants of the municipal corporation, construct sewers and sewage disposal works, construct hospitals, construct levies, dams, wasteways and improve any water course passing through the municipal corporation. Section 721.04-Any municipal corporation within the limits of which there is included a part of the shore of the waters of Lake Erie may in aid of navigation and water commerce, construct, maintain and operate piers, docks on any land belonging to the municipal corporation. Any such municipal corporation may by ordinance subject to federal legislation, establish harbor lines and other regulations. The territory for which this section applies is limited to that within the limits of the municipal corporation and extending into Lake Erie to the distance of two miles from the natural shoreline. For all purposes of government and exercises of such powers, the limits of any such municipal corporation shall be held to extend out, in, over and under such water and land made or that made within such territory. All powers granted by 721.04 shall be exercised subject to the powers of the United States government and the public rights of navigation. All mineral rights or other natural resources existing in the soil or water in such territory whether they are now covered by water or not are reserved to the state. Section 713.01-A municipal corporation may establish a city planning commission. Section 715.40-A municipal corporation may open and construct sewage disposal works. Section 715.43-A municipal corporation has the power to collect and dispose of refuse. Section 715.29-A municipal corporation may regulate by ordinance the use, control and maintenance of buildings used for human occupancy.

### 3) Specific Powers

a) Land-Section 709.13-The inhabitants of a municipal corporation may enlarge the limits of such municipality by the annexation of contiguous territory.

b) Water-Section 715.08-A municipal corporation may provide for the supply of water by the construction of wells, aqueducts and water works for the protection of such water supply and to prevent the unnecessary waste of water and pollution. Section 715.15- A municipal corporation may open, enlarge etc. any canal or watercourse located in whole or in part in the municipality. Section 715.31-A municipal corporation may regulate public landings, wharves, docks etc.

MUNICIPAL CORPORATIONS CONT'D

- 4) Power to Appropriate-Section 709.13-A municipal corporation may annex adjacent territory. Section 719.01-A municipal corporation may appropriate real estate for opening, straightening and extending streets or other public places for parks, for prisons, hospitals, levies, wharves and landings, for providing a water supply for itself and its inhabitants, for the purpose of the construction or operation of streets, for other railway companies, for establishing airports, landing fields or other air navigation facilities, either within or without the limits of a municipal corporation, for aircraft and transportation terminals, with power to impose restrictions on any part thereof and leasing such part thereof as is desired for the purposes associated with or incident to such airports, landing fields etc.
- 5) Power to Lease, Sell or Promote Development of Land-Section 715.01-A municipal corporation may lease buildings, structures or other improvements. Section 721.01-A municipal corporation may sell or lease property belonging to the municipal corporation.
- 6) Exceptions to Powers-Section 1509.39-A municipal corporation may legislate so as to protect health and safety in the course of drilling for oil and gas but may not enact legislation which is less stringent than that is contained in chapter 1509 relating to the Division of Oil and Gas or the rules promulgated by the chief division of oil and gas. Section 713.14-The legislative power granted to the municipal corporation does not repeal, reduce or modify any power granted by law or charter to any municipal corporation or the legislative authority thereof or impair or restrict the power of any municipal corporation under Article 18 of the Ohio Constitution. Section 713.15-The lawful use of any structure or land as existing and lawful at the time of enacting an zoning ordinance may be continued although such use does not conform with the ordinance, but if such nonconforming use is voluntarily discontinued for two years or more any future use of land shall be in conformity with said zoning ordinance. Section 719.01-May not appropriate land of a common carrier, public utility unless provision is made for restoration etc.
- 7) Rule Making Powers

## SANITARY PLANTS

- 1) Creation of the Authority-Section 3707.40
- 2) General Powers and Duties-Section 3707.46-A Sanitary Board shall have entire control of the erection and maintenance of a sanitary plant and the purchase of necessary real property. The Board may modify the original plant specifications subject to the approval of the Director of EPA. Section 3707.42-Upon obtaining the approval of the Director of EPA, the legislative authority of a municipal corporation may contract to erect and maintain a sanitary plant. Section 3707.41-Upon the recommendation of the Board of Health, of a city, the legislative authority of the governmental subdivision may cause plans and estimates to be prepared and land to be appropriated as is necessary to provide for the proper disposal of sewage, garbage and waste matters of the municipal corporation.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate-Section 3707.41-A municipal corporation may condemn land within or without its jurisdiction for construction of a sanitary plant for the disposal of waste, on recommendation of the Board of Health.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers

## PARKS AND RECREATION

- 1) Creation of the Authority-Section 755.01
- 2) General Powers and Duties-Section 755.01-The Board of Park Commissioners shall have control of the management of parks. Section 755.08-The Board of Park Commissioners may establish or extend parks, boulevards and playgrounds within such city or territory contiguous thereto.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate-Section 755.03-The Board may appropriate property for park purposes.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers-Section 755.07-The Board of Park Commissioners may adopt rules in aid and control and management of parks.

## PLANNING COMMISSION

- 1) Creation of the Authority-Section 713.01-The legislative authority of a village or city may establish a city planning commission.
- 2) General Powers and Duties-Section 713.02-The planning commission of a city shall make plans and maps of the whole or any portion of the municipal corporation showing the commission's recommendation for the locations and character and extent of streets, alleys, etc. Whenever the commission makes such a plan no public building, structure, street, dock, utility, etc. shall be constructed or authorized to be constructed in the municipal corporation or portion thereof unless the location character and extent thereof is approved by the commission.
- 3) Specific Powers
  - a) Land-Section 713.07-The planning commission may regulate and restrict the location of buildings. Section 713.08-The planning commission may place restrictions on the heights of buildings and structures. Section 713.09-The city planning commission may place restrictions on location, height and bulk of buildings.
  - b) Water-
- 4) Power to Appropriate-No specific grant.
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 713.02-The city planning commission disapproval of a certain location may be overridden by a 2/3 vote of the legislative authority. Section 713.14-Nothing in Chapter 713 shall repeal, reduce or modify any power granted by law or charter to any municipal corporation, or the legislative authority thereof or impair, restrict the power of any municipal corporation under Article 18 of the Ohio Constitution. Section 713.15-A municipal corporation may not enact a zoning ordinance, zoning out a prior non-conforming use and a prior non-conforming use becomes non-functional if it is voluntarily discontinued for two years.
- 7) Rule Making Powers-Section 713.07-The city planning commission may adopt rules restricting the location of buildings. Section 713.03-The city planning commission may place height restrictions on buildings.

APPENDIX D.

Interstate Authorities



## INTERSTATE REGIONAL PLANNING COMMISSION

- 1) Creation of the Authority-Section 713.30-Any board of county commissioners and the legislative authority of a municipality may cooperate with such other boards or authorities of this state and of any adjoining state to create by an agreement an Interstate Regional Planning Commission whenever such subdivisions comprise a region which would benefit from the cooperative governmental planning. Section 713.33-An Interstate Regional Planning Commission shall recommend procedures and policies to the appropriate authority to promote the coordinated development of the region and the general health, welfare, convenience and prosperity of the people within the region. The commission shall further recommend policies to promote development of the region.
- 2) General Powers and Duties
- 3) Specific Powers
  - a) Land-Section 713.33-The Commission is to recommend policies for the distribution and intensity, for general land use.
  - b) Water-Section 713.33-The Commission is to recommend policies promoting water transportation.
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land-Section 713.33-The Interstate Regional Planning Commission shall recommend policy to promote development of the region.
- 6) Exceptions to Powers
- 7) Rule Making Powers

INTERSTATE COMPACT: KENTUCKY

- 1) Creation of the Authority-Section 105.34-Ohio Commission on Interstate Cooperation. Section 105.36-The Ohio Commission on Interstate Cooperation is to advance cooperation between this state and other states as to facilitate the adoption of compacts. Section 3723.04-Interstate Air Pollution Compact.
- 2) General Powers and Duties-Article 4-When the Commission is created under Article 3 and designated as the Ohio-Kentucky Interstate Air Pollution Control Committee determines that air pollution originates in a party state and has an adverse effect on the other state, it may recommend a method of abatement, etc. The Commission shall develop ambient air quality standards, monitor and issue cease and assist orders.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers

INTERSTATE COMPACT: WEST VIRGINIA

- 1) Creation of the Authority-Section 105.34-Ohio Commission on Interstate Cooperation. Section 105.36-The Ohio Commission on Interstate Cooperation is to advance cooperation between this state and other states by facilitating adoption of compacts. Section 3723.01-Interstate Compact on Air Pollution.
- 2) General Powers and Duties-Article 4-When the Commission determines air pollution originates in a party state and has an adverse effect on the other state, it may recommend a method of abatement, etc. The Commission as created under the interstate compact may develop ambient air quality standards, may monitor and also issue cease and assist orders. Article 3-The Interstate Compact creates an Ohio-West Virginia Interstate Air Pollution Control Committee.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers

## GREAT LAKES BASIN COMPACT

- 1) Creation of the Authority-Section 6161.01-To promote comprehensive use of waters of the Great Lakes Basin.
- 2) General Powers and Duties-Section 6161.01-Article 4-Creation of a Great Lakes Commission which shall consider the need for public works and improvements to the water resources of the basin, shall approve navigation and port facilities, shall recommend uniform or other laws relating to the development, use and conservation of the basin water resources and shall recommend the methods for the orderly, efficient and balanced, development and use etc. of the water resources for the basin.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers
- 7) Rule Making Powers

APPENDIX E.  
Private Entities

## COMMUNITY REDEVELOPMENT CORPORATIONS

1) Creation of the Authority-Section 1723.01-Any general corporation formed, may qualify to operate as a Community Redevelopment Corporation if it meets certain statutory requirements and its purposes is to initiate and conduct projects for the clearance, replanning, development and redevelopment of blighted areas within municipal corporation and when so authorized by financial agreement with the municipal corporation to acquire, plan, develop or operate one or more projects under such conditions of use as a regulated by Chapter 1723.

2) General Powers and Duties-Section 1723.02-The purpose of a Community Redevelopment Corporation is to conduct projects for clearance and redevelopment of blighted areas within a municipal corporation. Section 1723.07-Every approved project shall be evidenced by a financial agreement between the municipal corporation and a community urban redevelopment corporation.

### 3) Specific Powers

a) Land-Section 1723.02-A municipal corporation having acquired land in a blighted area may lease or sell property to the corporation on private terms. When a municipal corporation has acquired land in a blighted area the governing body of that municipal corporation may make such land available for use by the Community Urban Redevelopment Corporation.

#### b) Water

4) Power to Appropriate-Section 1723.13-Municipal corporation may not acquire by eminent domain property of a public utility, for a Redevelopment Corporation.

### 5) Power to Lease, Sell or Promote Development of Land

6) Exceptions to Powers-Section 1723.13-A Community Redevelopment Corporation may not be competitive with a public utility. Section 1723.04-So long as a Community Urban Redevelopment Corporation is obligated under a financial agreement with a municipal corporation it shall not engage in business other than the acquisition, construction and management of redevelopment projects within the blighted area.

### 7) Rule Making Powers

## COMMUNITY IMPROVEMENT CORPORATIONS

- 1) Creation of the Authority-Section 1724.01-A corporation not for profit may be organized under this section for the sole purpose of advancing, encouraging and promoting the industrial, economics, commercial and civic development of a community or area.
- 2) General Powers and Duties-Section 1724.02-The corporation may borrow, make loans, acquire property and do all things necessary or convenient to carry out powers created in Section 1724. Section 1724.10-A community improvement corporation may be designated by a political subdivision as the agency for the industrial commercial and research development.
- 3) Specific Powers
  - a) Land
  - b) Water
- 4) Power to Appropriate
- 5) Power to Lease, Sell or Promote Development of Land-Section 1724.01-A community improvement corporation is organized to promote industrial, economic and civic development within a community. Section 724.10-A political subdivision may authorize a community improvement corporation to sell or lease any lands etc. owned by the political subdivision.
- 6) Exceptions to Powers
- 7) Rule Making Powers

## NEW COMMUNITY ORGANIZATION

- 1) Creation of the Authority-Section 349.01, Section 349.03.  
Proceeding for the organization of a new community authority shall be initiated by a petition filed by the developer in the office of the Clerk of the Board of County Commissioners of one of the counties in which all or part of the proposed new community district is located.
- 2) General Powers and Duties-Section 349.06-The authority may acquire by purchase lease, etc. real and personal property or any estate interest, etc. within or without the new community district, may improve, maintain or sell and lease community facilities, may landscape and improve areas within the new community district, may provide for and engage in recreational, educational, social, cultural, beautification and amusement activities and related services primarily for residents of the district, and may adopt rules and regulations governing the use of community facilities.
- 3) Specific Powers
  - a) Land-Section 349.06 (I)-The authority may make and enter into all contracts and agreements and execute all instruments relating to a new community development program, including contracts with a developer and other persons or entities related thereto for land acquisition, land development, construction and maintenance of community facilities.
  - b) Water
- 4) Power to Appropriate-No specific grant.
- 5) Power to Lease, Sell or Promote Development of Land-Section 349.06 (I)-The authority may make and enter into all contracts and agreements and execute all instruments relating to a new community development program, including contracts with the developer and other persons or entities related thereto for land acquisition, land development, construction and maintenance of community facilities.
- 6) Exceptions to Powers-Section 349.03 (C)-In the event that no commitment for federal financial assistance, whether in the form of a loan guaranty, grant, or loan, pursuant to the "Urban Growth and New Community Development Act of 1970," shall have been made for all or any portion of the new community development program for the new community district as set forth in the developer's petition within two years from the date of the adoption of such resolution, the new community authority shall be dissolved and shall do only such acts as are required to close its affairs. Section 349.05-The authority shall have no power or authority over zoning or subdivision regulation, provision of fire or police protection, or, unless such services cannot be obtained from other existing political subdivisions, water supply or sewage treatment and disposal.



7) Rule Making Powers-Section 349.06 (F)-The authority may adopt, modify and enforce reasonable rules and regulations governing the use of community facilities.

## HYDRAULIC COMPANIES

- 1) Creation of the Authority-Section 1723.01
- 2) General Powers and Duties-Section 1723.01-A corporation organized for the purpose of erecting or building dams across rivers or streams for the purposes of constructing and maintaining canals and raceways to regulate and carry such head of water to any power house where electricity is to be generated; for maintaining and erecting, poles, wires, pipes, conduits for the transmission of gas, coal, water or electricity, may appropriate so much land as is deemed necessary for said purposes.
- 3) Specific Powers
  - a) Land-Section 1723.02-A hydraulic company as referred to Section 1723.01, may lay pipes, wires under a state road if the Department of Transportation consents, under a county road if County Commissioners consent, under Township roads if Township Trustees consent and under roads owned by municipal corporations if the legislative body in that municipal corporation gives their consent.
  - b) Water-Section 1723.07-A hydraulic company may enter into an agreement with the Department of Administrative Services upon the approval of the Governor and Attorney General whereby a hydraulic company is to convey water from the dams and reservoirs built by it, over and upon any of the lands of the state or any channels or beds of the reservoirs, lakes or water courses; as long as navigation is not impaired thereby.
- 4) Power to Appropriate-Section 1723.01
- 5) Power to Lease, Sell or Promote Development of Land
- 6) Exceptions to Powers-Section 1723.02-A hydraulic company may not appropriate land for the purpose of erecting any tanks stations, reservoirs or buildings or more than one continuous pipe conduit or tubing on lands in or through a municipal corporation unless the legislative authority first consents. Section 1723.03-A hydraulic Company does not have the power to appropriate any street, alley, highway or other public way or land situated within a municipal corporation without such municipal corporation's consent.

Appendix F

Matrix Indicating the Manner of Impact  
of Local, State and Regional Entities  
On the Shore Zone

Appendix G

Surveys

OHIO DEPARTMENT OF NATURAL RESOURCES QUESTIONNAIRE

Subject: Main issues and problems concerning the Ohio Lake Erie Shore Zone.

Number of questionnaires distributed -- 9,940

Distribution breakdown:

5,000 (50%) random sample of residents in the nine county area

4,000 (40%) shore line residents

375 (.04%) public officials in nine counties

565 (.06%) area public interest groups

Number of questionnaires completed -- 1,393

Completion breakdown:

431 (30.9%) random sample of residents in the nine county area

744 (53.4%) shore line residents

98 (7%) public officials in nine counties

120 (8.6%) area public interest groups

Results of questionnaire:

Section I - All those surveyed were given a list of possible issues and asked to indicate whether or not they were of concern to them.

1. Inadequate sewage treatment facilities

	<u>Issue</u>	<u>Not Issue</u>
1. Public officials	62.2%	30.6%
2. Interest groups	70.8%	21.7%
3. Random sample	57.5%	31.8%
4. Shore resident	40.1%	44.6%
5. Total	49.7%	37.7%

2. Improper disposal of solid waste

	<u>Issue</u>	<u>Not Issue</u>
1.	49.0%	41.8%
2.	66.7%	23.3%
3.	56.6%	30.4%
4.	36.8%	42.5%
5.	46.4%	37.0%

3. Water level of Lake Erie is too high

	<u>Issue</u>	<u>Not Issue</u>
1.	67.3%	25.5%
2.	68.3%	23.3%
3.	61.6%	24.9%
4.	91.7%	5.9%
5.	78.7%	14.7%

4. Flooding of shore areas by Lake Erie

	<u>Issue</u>	<u>Not Issue</u>
1. Public officials	62.2%	30.6%
2. Interest groups	70.0%	25.0%
3. Random sample	68.4%	23.7%
4. Shore resident	82.8%	12.2%
5. Total	75.8%	18.2%

5. Beach and shore erosion by Lake Erie

	<u>Issue</u>	<u>Not Issue</u>
1.	72.4%	22.4%
2.	77.5%	17.5%
3.	80.7%	14.6%
4.	96.2%	2.4%
5.	88.1%	8.9%

6. Alteration of the shore by construction of erosion and flood protection structures

	<u>Issue</u>	<u>Not Issue</u>
1.	38.8%	44.9%
2.	60.0%	27.5%
3.	51.0%	27.8%
4.	52.8%	28.4%
5.	51.9%	29.3%

7. Alteration of the shore by filling and dredging

	<u>Issue</u>	<u>Not Issue</u>
1.	37.8%	45.9%
2.	55.8%	30.8%
3.	41.1%	33.2%
4.	42.5%	34.0%
5.	42.9%	34.3%

8. Filling and draining of wetlands and marshes

	<u>Issue</u>	<u>Not Issue</u>
1.	28.6%	53.1%
2.	54.2%	36.7%
3.	37.0%	38.4%
4.	25.3%	47.2%
5.	31.6%	44.0%

9. Disposal of polluted dredge material from Lake Erie's harbors

	<u>Issue</u>	<u>Not Issue</u>
1. Public officials	40.8%	43.9%
2. Interest groups	65.8%	26.7%
3. Random sample	56.8%	22.5%
4. Shore resident	46.9%	28.0%
5. Total	51.2%	27.3%

10. Extraction of mineral resources from the lake bottom and shore line areas

	<u>Issue</u>	<u>Not Issue</u>
1.	24.5%	54.1%
2.	45.0%	43.3%
3.	32.7%	39.0%
4.	30.1%	41.4%
5.	31.8%	41.7%

11. Provision of public access to the shore

	<u>Issue</u>	<u>Not Issue</u>
1.	51.0%	38.8%
2.	65.0%	30.8%
3.	58.6%	29.8%
4.	36.6%	48.6%
5.	46.9%	40.5%

12. Provision of public recreation facilities

	<u>Issue</u>	<u>Not Issue</u>
1.	64.3%	30.6%
2.	74.2%	20.0%
3.	69.6%	22.0%
4.	44.5%	43.1%
5.	56.2%	33.7%

13. Provision of marina facilities

	<u>Issue</u>	<u>Not Issue</u>
1.	34.7%	48.0%
2.	34.2%	51.7%
3.	37.4%	44.1%
4.	30.5%	49.2%
5.	33.2%	47.7%

14. Construction of offshore manmade islands

	<u>Issue</u>	<u>Not Issue</u>
1. Public officials	17.3%	63.3%
2. Interest groups	42.5%	45.8%
3. Random sample	20.4%	56.8%
4. Shore resident	19.9%	54.3%
5. Total	21.8%	55.0%

15. Preservation of natural or scenic shore lines

	<u>Issue</u>	<u>Not Issue</u>
1.	62.2%	27.6%
2.	75.8%	17.5%
3.	78.9%	12.1%
4.	69.2%	17.6%
5.	72.3%	16.6%

16. Quality of development adjacent to the shore line

	<u>Issue</u>	<u>Not Issue</u>
1.	53.1%	31.6%
2.	67.5%	24.2%
3.	59.6%	24.1%
4.	51.4%	28.0%
5.	55.5%	26.7%

17. Residential development of the shore line

	<u>Issue</u>	<u>Not Issue</u>
1.	48.0%	37.8%
2.	56.7%	29.2%
3.	43.2%	36.4%
4.	43.3%	39.8%
5.	44.7%	37.7%

18. Commercial development of the shore line

	<u>Issue</u>	<u>Not Issue</u>
1.	37.8%	46.9%
2.	57.5%	30.0%
3.	45.5%	32.0%
4.	37.6%	40.5%
5.	41.8%	37.4%



19. Industrial development of the shore line

	<u>Issue</u>	<u>Not Issue</u>
1. Public officials	38.8%	45.9%
2. Interest groups	59.2%	30.0%
3. Random sample	48.0%	31.1%
4. Shore resident	38.6%	39.4%
5. Total	43.3%	36.5%

20. Development of commercial harbor facilities

	<u>Issue</u>	<u>Not Issue</u>
1.	32.7%	50.0%
2.	45.8%	40.0%
3.	41.3%	36.2%
4.	33.2%	41.4%
5.	36.8%	40.3%

21. Siting of nuclear power plants on the shore line

	<u>Issue</u>	<u>Not Issue</u>
1.	43.9%	41.8%
2.	53.3%	39.2%
3.	52.0%	33.2%
4.	35.6%	43.5%
5.	42.8%	39.8%

22. Maintenance of publicly owned land

	<u>Issue</u>	<u>Not Issue</u>
1.	58.2%	28.6%
2.	62.5%	30.0%
3.	65.7%	20.4%
4.	47.0%	32.7%
5.	54.9%	28.4%

Section II - All of those surveyed were presented a list of 16 environmental, economic and governmental factors and asked whether they felt if these factors would be beneficial or not beneficial to their area.

1. Urban Growth

	<u>Beneficial</u>	<u>Not Beneficial</u>
1. Public officials	37.8%	35.7%
2. Interest groups	29.2%	54.2%
3. Random sample	29.2%	50.8%
4. Shore resident	20.8%	49.1%
5. Total	25.3%	49.2%

2. Recreational growth

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	80.6%	11.2%
2.	79.2%	12.5%
3.	81.2%	12.5%
4.	56.2%	23.3%
5.	67.6%	18.2%

3. Industrial development

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	62.2%	25.5%
2.	46.7%	40.0%
3.	45.9%	42.0%
4.	22.7%	51.5%
5.	34.7%	45.7%

4. Protection of water quality

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	86.7%	3.1%
2.	93.3%	0.0%
3.	94.7%	1.4%
4.	88.0%	2.7%
5.	90.5%	2.1%

5. Preservation of existing natural shore land areas

	<u>Beneficial</u>	<u>Not Beneficial</u>
1. Public officials	74.5%	7.1%
2. Interest groups	83.3%	5.0%
3. Random sample	86.5%	2.6%
4. Shore resident	87.6%	2.2%
5. Total	86.0%	2.9%

6. More control of development

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	69.4%	17.3%
2.	79.2%	10.0%
3.	76.1%	11.1%
4.	66.4%	13.4%
5.	70.7%	12.7%

7. Stronger state role in the control of development

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	43.9%	41.8%
2.	46.7%	40.0%
3.	61.0%	26.9%
4.	53.0%	25.8%
5.	54.3%	28.5%

8. Increased regional planning authority

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	51.0%	36.7%
2.	62.5%	30.0%
3.	70.5%	16.7%
4.	63.0%	17.2%
5.	64.5%	19.5%

9. No growth policy

	<u>Beneficial</u>	<u>Not Beneficial</u>
1. Public officials	11.5%	64.6%
2. Interest groups	25.0%	55.8%
3. Random sample	17.2%	54.3%
4. Shore resident	21.5%	41.6%
5. Total	19.8%	48.3%

10. Construction of larger port facilities

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	45.9%	21.4%
2.	35.8%	36.7%
3.	46.2%	24.6%
4.	28.1%	36.8%
5.	35.6%	31.9%

11. The construction of nuclear fuel power plants

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	49.0%	22.4%
2.	37.5%	38.3%
3.	43.9%	29.0%
4.	29.4%	38.6%
5.	36.0%	34.5%

12. The construction of fossil fuel power plants

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	26.5%	35.7%
2.	20.0%	48.3%
3.	30.9%	38.1%
4.	20.6%	42.7%
5.	24.1%	41.3%

13. Agricultural development

	<u>Beneficial</u>	<u>Not Beneficial</u>
1. Public officials	55.1%	12.2%
2. Interest groups	55.0%	19.2%
3. Random sample	46.9%	17.4%
4. Shore resident	37.2%	18.7%
5. Total	43.0%	17.9%

14. Mining operations

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	11.2%	39.8%
2.	6.7%	57.5%
3.	9.7%	49.4%
4.	6.2%	46.0%
5.	7.7%	47.6%

15. Man made controls of lake levels

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	62.2%	10.2%
2.	47.1%	29.4%
3.	62.4%	15.5%
4.	77.2%	9.4%
5.	69.0%	13.1%

16. Agricultural land preservation

	<u>Beneficial</u>	<u>Not Beneficial</u>
1.	62.2%	8.2%
2.	69.2%	8.3%
3.	65.7%	6.8%
4.	61.6%	8.5%
5.	63.6%	7.9%

Section III - All of those surveyed were asked to rate the current quality of the shore line and beaches of Lake Erie.

	<u>High</u>	<u>Medium</u>	<u>Low</u>	<u>Very Low</u>
1. Public officials	1.0%	8.2%	41.8%	34.7 %
2. Interest groups	1.7%	5.0%	35.8%	49.2%
3. Random sample	1.4%	5.6%	26.7%	55.5%
4. Shore resident	1.5%	9.4%	25.0%	50.7%
5. Total	1.4%	7.8%	27.6%	50.9%

Section IV A. - The random sample and the shore residents were asked which level of government could do the best job of improving the condition of Lake Erie and the shore line.

1. State

	<u>Best</u>	<u>Not Best</u>
1. Random sample	69.6%	30.4%
2. Shore residents	69.0%	31.0%
3. Total	69.2%	30.8%

2. Regional

	<u>Best</u>	<u>Not Best</u>
1.	30.4 %	69.6 %
2.	21.7 %	78.3%
3.	25.2 %	74.8 %

3. County

	<u>Best</u>	<u>Not Best</u>
1.	28.1 %	71.9 %
2.	18.7 %	81.3%
3.	22.5 %	77.5%

4. Municipal

	<u>Best</u>	<u>Not Best</u>
1.	17.5 %	82.5 %
2.	18.9 %	81.1%
3.	18.4 %	81.6 %

5. Township

	<u>Best</u>	<u>Not Best</u>
1. Random sample	5.0%	95.0%
2. Shore residents	10.8%	89.2%
3. Total	8.5%	91.5%

6. Federal

	<u>Best</u>	<u>Not Best</u>
1.	60.3%	39.7%
2.	74.2%	25.8%
3.	68.7%	31.3%

Section IV B. - The public officials and the interest groups were surveyed and asked which level of government should assume either more or less responsibility in planning, capital improvements and regulations along the Lake Erie shore line.

	<u>Planning</u>		<u>Capital Investments</u>		<u>Regulations</u>	
	<u>More</u>	<u>Less</u>	<u>More</u>	<u>Less</u>	<u>More</u>	<u>Less</u>
Federal	33.6%	38.2%	48.6%	23.4%	26.6%	42.2%
State	53.2%	25.5%	59.6%	9.6%	48.2%	23.4%
Regional	50.0%	17.4%	39.4%	17.9%	41.7%	18.8%
County	48.2%	17.4%	37.2%	19.7%	38.1%	19.7%
Municipal	43.6%	19.7%	26.6%	23.4%	34.9%	17.4%
Township	34.9%	23.9%	19.7%	27.1%	26.6%	22.5%
Special Districts	27.5%	22.0%	19.7%	21.6%	21.6%	25.7%
Private	31.2%	18.2%	24.8%	17.4%	17.4%	24.8%

In an effort to assess what management techniques regional and local agencies prefer, what powers affecting the coastal zone they presently exercise, and the governmental network through which they exercise these powers, three hundred and ten regional, county and municipal agencies in the coastal zone were surveyed. Sixteen percent (49) responded to the questionnaire.

Following is a sample of the questionnaire with a breakdown of the responses and comments for each question.

The major findings are:

- 1.) 86% of those responding favor either the state establishment of standards with local government carrying them out or the state reviewing all plans for their consistency with an overall development plan;
- 2.) The agency most often mentioned as the agency that does the best job on Lake Erie related problems is the Army Corps of Engineers;
- 3.) The most favored administrative technique is approval or disapproval by a special board made up of state, regional and local officials; and the least favored is approval or disapproval by an authorized state official.



1. Name and location of your agency 49 respondents
2. Do you own property or operate facilities along the Lake Erie Shoreline? 16 yes 30 no  
Specify \_\_\_\_\_
3. What local and regional agencies do you most often deal with on matters relating to Lake Erie? Regional planning agencies were most often mentioned.
4. What state agencies do you most often deal with on matters relating to Lake Erie? The Ohio Environmental Protection Agency and the Ohio Department of Natural Resources were most often mentioned.
5. What agency, at all levels of government, do you feel does the best job on problems relating to Lake Erie? U. S. Army Corps of Engineers was most often mentioned.
6. Which of the following administrative techniques, or combination of them, do you favor as the most functional & most acceptable?
- 23 A. The state establishment of standards for land & water use with local government carrying them out.
- 6 B. The state directly regulating land & water use.
- 13 C. The state reviewing all plans and approving or disapproving them based on their consistency with an over-all development plan.

Comment: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. What is a reasonable review period for a state agency on projects of local interest? the answers ranged from 2 weeks to 1 year, with 60 days being the average.
8. Do you differentiate between projects of only local interest and projects of regional concern? 33 yes 10 no
9. If so, what criteria do you use in differentiating?  
(Please check)
- |  |           |
|--|-----------|
| A. Dollar amount of project                    | <u>7</u>  |
| B. Acreage involved                            | <u>8</u>  |
| C. Number of other agencies involved           | <u>11</u> |
| D. If the Lake Erie shore is directly affected | <u>17</u> |
| E. Other _____                                 |           |
- \_\_\_\_\_
- \_\_\_\_\_

10. Which of the following administrative techniques would you most prefer to see applied to land & water use decision making along the Lake Erie Coastal Zone? (Please rank 1 to 10, with 1 being your most preferred method and 10 being your least preferred)

175 A. Review and comment by an authorized state official.  
205 B. Approval or disapproval by an authorized state official.  
171 C. Review and approval or disapproval by an authorized local official only.  
139 D. Review and comments by an authorized State Coastal Zone Commission.  
149 E. Approval or disapproval by an authorized State Coastal Zone Commission.  
120 F. Review and comments by a Regional Planning Agency.  
137 G. Approval or disapproval by a Regional Planning Agency.  
115 H. Approval or disapproval by special board made up of state, regional and local officials.  
141 I. Public hearing process to permit review and comments by any interested citizens.  
81 J. Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Do you presently exert controls over Lake Erie waters? 9 yes 37 no

If yes, in what manner and under what authority? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In exerting control, with what other agencies do you work? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What degree of cooperation do you get from these other agencies? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Do you presently exert control over the use of lands bordering on or directly affected by Lake Erie? 22 yes 23 no

If yes, in what manner and under what authority? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In exerting control, with what other agencies do you work? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What degree of cooperation do you get from these other agencies? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Do you exert any control over structures built in Lake Erie?  
(i.e. dock, marina) 10 yes 35 no

If yes, in what manner and under what authority? \_\_\_\_\_

In exerting control, with what other agencies do you work? \_\_\_\_\_

What degree of cooperation do you get from these other agencies? \_\_\_\_\_

14. Because you work every day with problems related to Lake Erie  
any additional comments, suggestions or ideas you may have would  
greatly benefit future planning for the Lake Erie Coastal Zone.  
We would appreciate having those comments here. \_\_\_\_\_

Thanks again for your help in this survey.

1. The 49 agencies responding to our survey can be classified in the following groups:

<u>Type of Agency</u>	<u>Number of Respondents</u>	<u>% of Total</u>
1. Soil & Water Conservancy Districts	6	12%
2. County Planning Agency	4	8%
3. Regional Planning Agency	3	6%
4. Municipal Corporations	23	47%
5. Park Districts	5	10%
6. Extension Services	2	4%
7. Interstate Agencies	1	2%
8. Port Authority	2	4%
9. Soil Conservation Services	2	4%
10. Conservancy Districts	1	2%
Totals	49	97%

2. 65% of the agencies answering question 2 said that they neither own nor operate property along the Lake Erie shoreline.

The 35% that indicated that they either own property or operate facilities on Lake Erie said that those facilities include:

- Marinas
- Waste water treatment plants
- Recreation areas
- Small boat landings
- Roads
- Open land
- Harbors

3. The respondents mentioned virtually every type of regional and local agency including some state and federal agencies.

Regional planning agencies were most often mentioned (13 times) as the agency dealt with on matters related to Lake Erie.

4. The Ohio Department of Natural Resources was mentioned by 27 of the respondents as the state agency which they deal with most often on matters related to Lake Erie. 11 mentioned E.P.A. and the other state agencies were mentioned only once or twice at the most.

5. The Army Corps of Engineers was mentioned by 14 of the agencies responding to the questionnaire as the agency that does the best job on problems related to Lake Erie. ODNR was next with 8. 4 said that no one does a good job.

6. 55% of those answering questions, 6 said that they favor "the state establishment of standards for land and water use with local government carrying them out." 31% favor "the state reviewing all plans and approving or disapproving them based on their consistency with an overall development plan." Only 14% favor the state directly regulating land and water use.

The majority of the comments were that home rule must be preserved and the state should not try to dictate from Columbus.

7. The recommendations for what would be a reasonable review period by a state agency on a project of local concern ranged from 2 weeks to 1 year. The average was 60 days.

8. 76% of the respondents said that they differentiate between projects of only local interest and those of regional concern.

9. In addition to dollar amount of project, acreage involved, number of other agencies involved, and whether the Lake Erie Shore is affected, respondents stated that when they decide if a project is regional or local in nature, they look at whether the project crosses a local boundary, nature of the project, the sphere of influence of the project, and if more than one agency is affected.

10. Of the alternative administrative techniques presented in question 10 the most preferred was:

- H. Approval or disapproval by special board made up of state, regional and local officials

The following are listed in order of their preference by the questionnaire respondents:

- F. Review and comments by a Regional Planning Agency
- G. Approval or disapproval by a Regional Planning Agency
- D. Review and comments by an authorized State Coastal Zone Commission.
- I. Public hearing process to permit review and comments by any interested citizens
- E. Approval or disapproval by an authorized State Coastal Zone Commission
- C. Review and approval or disapproval by an authorized local official only
- A. Review and comment by an authorized state official
- B. Approval or disapproval by an authorized state official

11. 80% of those answering this questionnaire stated that they exert no controls over Lake Erie Waters. Those who said they do exert controls do so through their port authority. ORC Section 1545 A-95 and harbor master.

In exercising these controls the respondents said that they work with the Department of Health, OEPA. Regional planning agencies extension services and municipalities. Most said they get fair to good cooperation from these agencies with only a few saying they received poor cooperation.

12. 51% of the respondents to this question said that they do exert controls on lands bordering on or directly affected by Lake

Erie. 49% said they do not. Those who said they do exert controls do so through zoning. Subdivision regulations, planning, platting, building codes and cooperation with the soil and water conservation districts.

In exercising these controls the respondents said that they work with soil conservation services, township trustees, regional planning commissions county offices. OEPA, ODNR, the Corps of Engineers, the Coast Guard, and City offices. Most felt they got at least adequate cooperation from these agencies.

13. When asked if they exert controls over structures built in Lake Erie 77% of those responding said they do not. Those who said that they do exert controls do so through A-95, water intake, and the port authority.

In exercising these controls most said that they work with either OEPA, ODNR or the Corps of Engineers. Most felt that the cooperation from these agencies was fairly good.

INTERVIEWS

Paul Baldridge	Deputy Director for Community Services, Ohio Department of Economics and Community Development
Carl Broberg	Ohio Municipal League
June Brown	Toledo Metropolitan Area Council of Governments
William Gaskill	County Administrator, Cuyahoga County
J. Phillip Gasteier	County Commissioner, Erie County
Norman Gatti	Chief, Division of Mines Ohio Department of Industrial Relations
Paul Gessling	Ohio Office of Budget & Management
Dale Haney	Chief, Division of Wildlife, Ohio Department of Natural Resources
John Hofstetter	Assistant Chief, Division of Transportation, Ohio Public Utilities Commission of Ohio
Eugene R. Kasper	Director, Department of Public Service City of Toledo
Harry Kessler	Mayor, City of Toledo
George Kokinda	Township Clerk, Sheffield Township, Lorain County
Norman Krumholz	Planning Director, City of Cleveland
Larry Lang	Ohio County Commissioners Association
Don Ledwell	Director, Health Department, Erie County
Bush Mahanami	Chief of Planning, Erie County
Peter Mango	Trustee, Ashtabula Township, Ashtabula County



Neal McCabe	Appalachian Regional Bureau, Ohio Department of Economic and Community Development
Walter Milbrodt	County Commissioner, Ottawa County
Tom Morganti	Planning Director, Ottawa County
Lester Nero	City Manager, City of Painesville
Fred Pizzedez	NOACA
Sandy Prudoff	Chief Planner, City of Lorain
Bob Reeves	NOACA
John Schaeffer	County Commissioner, Erie County
Harold Schick	Cleveland Metropolitan Park District
Ray Sherman	County Administrator, Erie County
Nat Simon	Chief, Division of Transportation Planning, Ohio Department of Transportation
Barry Smith	Executive Director, Environmental Board of Review
John Stackhouse	Director, Ohio Department of Agriculture
John Sulpizio	Planner, City of Lorain
Harry Sweringen	Ohio Water Development Commission
Charles Tripp	Chief, Bureau of Environmental Affairs, Ohio Department of Transportation
Alvin Vaith	County Commissioner, Erie County
Ray Weisant	Department of Administrative Services Division of Public Works

John Widmer

Planner, Ottawa County

John Williams

Ohio Power Citing Commission

Jack Wilson

Chief, Division of Enforcement  
Ohio Environmental Protection Agency

Joseph Zahoreck

Mayor, City of Lorain

Appendix H

Illustration of Coastal Zone Boundary

ILLUSTRATION OF COASTAL ZONE BOUNDARY DEFINITION

